



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

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Boston, MA 02109-3912

VIA ELECTRONIC FILING

June 23, 2015

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

RE: In the Matter of General Electric Aviation (NPDES Permit No. MA0003905);
NPDES Permit Appeal No. 14-03;

Dear Ms. Durr:

Please find enclosed EPA Region 1 and General Electric Aviation's, "Fourth Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding," and an accompanying Certificate of Service in connection with NPDES Appeal No. 14-03.

Thank you for your assistance with the filing of this pleading with EPA's Environmental Appeals Board.

Sincerely,

A handwritten signature in blue ink that reads "Mark A. Stein".

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Enclosures

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

In the Matter of:)	
General Electric Aviation)	NPDES Appeal No. 14-03
NPDES Permit No. MA0003905)	

**FOURTH JOINT SETTLEMENT NEGOTIATIONS STATUS REPORT AND
MOTION TO CONTINUE THE STAY OF PERMIT APPEAL PROCEEDING**

In accordance with the Environmental Appeals Board's ("Board") Order dated April 15, 2015, Region 1 of the United States Environmental Protection Agency ("Region 1" or "the Region") and General Electric Aviation ("GE") respectfully submit this Fourth Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding.

The parties are pleased to report that they have agreed on the terms of a settlement of this permit appeal. The parties must ask the Board to extend the stay of this proceeding, however, because, as detailed below, the timing by which certain steps in the settlement plan will be completed is not entirely within the control of the parties.

Specifically, the parties jointly move that the Board:

- (a) extend the current stay of this permit appeal proceeding until October 1, 2015 (*i.e.*, by ninety days), to allow the parties to pursue completion of their plan for settling this permit appeal without further litigation; and

(b) require the parties to submit another settlement negotiations status report by no later than September 4, 2015.

The bases for this motion are set forth below.

BACKGROUND

A chronology of key events in this proceeding is presented below.

- 1) On September 30, 2014, Region 1 issued National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0003905 to GE (the “2014 Final Permit”).
- 2) On October 30, 2014, GE filed a petition with the Board requesting review of certain conditions of the 2014 Final Permit.
- 3) On November 7, 2014, Region 1 and GE jointly moved the Board to stay the proceeding to allow the parties time to pursue settlement negotiations.
- 4) On November 13, 2014, the Board issued an Order staying the proceeding until January 2, 2015, and directing the Region, in consultation with GE, to file a report on the status of settlement negotiations by December 15, 2014.
- 5) On December 15, 2014, the parties filed the required status report and requested an extension of the stay to allow continued focus on settlement negotiations.
- 6) On December 16, 2014, the Board extended the stay of the proceeding until March 3, 2015, and directed the Region, in consultation with GE, to report on the status of settlement negotiations by February 13, 2015.
- 7) On February 13, 2015, the parties jointly filed the required Status Report and moved that the Board continue the stay of the permit appeal proceeding so that the parties could continue to pursue promising settlement negotiations.

- 8) On February 20, 2015, the Board issued its Second Order Extending Stay of Proceedings in which it both extended the stay of proceedings until May 4, 2015, and ordered the parties to report on the status of settlement negotiations by April 15, 2015.
- 9) On April 14, 2015, the parties jointly filed the required Status Report and moved that the Board continue the stay of the permit appeal proceeding so that the parties could try to complete the settlement negotiations on the few remaining issues.
- 10) On April 15, 2015, the Board issued its Third Order Extending Stay of Proceedings in which it both extended the stay of proceedings until July 6, 2015, and ordered the parties to report on the status of settlement negotiations by June 23, 2015.

STATUS REPORT ON SETTLEMENT NEGOTIATIONS

Since the Board extended the stay of these proceedings on April 15, 2015, Region 1, the Massachusetts Department of Environmental Protection (“MassDEP”) and GE have continued efforts to negotiate full resolution of this permit appeal without further litigation. Related discussions between the regulatory agencies and Lynnway Associates, LLC (Lynnway),¹ have also continued with respect to NPDES permitting issues involving former portions of the GE property that have been acquired by Lynnway.

Region 1, MassDEP and GE are pleased to report that after further information gathering and sharing and additional negotiations, they have agreed on a full settlement of this permit appeal. For some issues raised in the appeal, the permit will remain unchanged. For other issues, as discussed below, the agencies will make, or at least

¹ As reported in the Status Report of February 13, 2015, Lynnway purchased part of the GE property after Region 1 issued GE the NPDES permit at issue in this appeal.

propose, certain permit modifications. The parties' plan for settlement is described below.

1. The parties plan to resolve one subset of the issues raised in this appeal by having Region 1 and MassDEP make a set of agreed upon modifications to the 2014 Final Permit pursuant to 40 C.F.R. § 122.62. The regulatory agencies have agreed to propose these modifications and have also tentatively or conditionally agreed to finalize them. The agreement to finalize the modifications is necessarily tentative or conditional in nature, because the proposed modifications must be published for public review and comment, and the agencies must consider any public comments that may be submitted before they can finalize the proposed permit modifications. Region 1 and MassDEP expect to propose the agreed upon draft permit modifications on or around July 3, 2015. Region 1 and MassDEP plan to hold a 30-day public comment period on the proposed modifications. *See* 40 C.F.R. § 124.10(b). In accordance with 40 C.F.R. § 122.62 (introductory paragraph), only the permit conditions proposed for modification will be reopened for comment. GE agrees that it will not submit adverse comments on the proposed, agreed-upon permit modifications. The parties acknowledge, however, that they cannot control or know in advance whether any third party may submit adverse comments for the agencies to consider.

2. If no adverse public comments are submitted in response to the proposed permit modifications, then Region 1 will issue a final permit decision and the modifications will go into effect immediately in accordance with 40 C.F.R. §§ 124.15(a) and (b). If adverse comments are submitted, *see* 40 C.F.R. § 124.15(b)(3), then Region 1 and MassDEP will consider those comments and decide how to proceed with regard to the modifications.

There is no way to be certain in advance about how long it will take to consider and respond to any adverse comments that may be submitted, *see* 40 C.F.R. §124.17, but given the nature of the issues, EPA does not currently anticipate it taking more than approximately 60 days to consider and respond to any comments. Indeed, it could take considerably less than 60 days.

3. If Region 1 ultimately issues the final permit modifications as agreed upon with GE, GE will then withdraw its appeal of the corresponding provisions of the 2014 Final Permit. To the extent that these final modifications are *not* appealed, Region 1 and MassDEP would then be able to be put the modifications into effect, along with the rest of the 2014 Final Permit. *See* 40 C.F.R. §§ 124.15(a) and (b).

4. If Region 1 issues a final permit decision for the agreed upon modifications but a third party appeals the final modifications, then Region 1 will respond to the appeal, *see* 40 C.F.R. § 124.19(b)(2), and GE will also have the option of responding to the appeal in defense of the modifications. *See* 40 C.F.R. § 124.19(b)(3). If a third party appeals one or more of the modifications, the challenged modifications would be stayed along with any other provisions of the 2014 Final Permit that are not yet in effect and are not severable from the contested, stayed modifications. *See* 40 C.F.R. §§ 124.16(a) and 124.60(b). For any such stayed permit provisions, the corresponding permit provisions from the currently effective 1993 permit would continue to remain in effect.

5. If Region 1 decides *not* to finalize the permit modifications as currently agreed upon – either by altering terms of the modifications or by deciding to retain some or all of existing provisions of the 2014 Final Permit – then GE has the option of either accepting the final permit conditions proposed by Region1 or appealing any altered terms of the

modifications or retained terms from the 2014 Final Permit that GE had earlier challenged in this permit appeal.

6. Finally, apart from the permit modifications discussed above, GE, Region 1 and MassDEP have agreed that another subset of issues raised in this appeal will be resolved by Region 1 and MassDEP issuing a set of “minor” permit modifications pursuant to 40 C.F.R. § 122.63. These terms of the minor modifications have also been agreed upon by GE, Region 1 and MassDEP. The minor modifications will make certain changes to the (currently stayed) 2014 Final Permit. Once the agreed upon minor modifications have been issued, GE has agreed to withdraw its appeal as to the corresponding terms of the 2014 Final Permit. Region 1 and MassDEP will issue the minor modifications at the same time that they issue the final decision on the “non-minor” modifications discussed above.

With regard to the NPDES permitting issues that concern Lynnway and discharges from the former GE property purchased by Lynnway, Region 1 and MassDEP are engaged in discussions with Lynnway in an effort to work out a satisfactory approach to NPDES permitting. These efforts will continue outside of this permit appeal proceeding.

MOTION

In order to provide the parties time to carry out the above-described steps for resolving this permit appeal, Region 1 and GE jointly move that the Board extend the current stay of this proceeding until October 1, 2015. (This works out to an extension of 90 days.) Again, while the parties believe that they may not need all this time to effectuate the proposed permit modifications, they cannot presently be certain about whether or what comments may be submitted that will require consideration and responses to comments. 40 C.F.R. § 124.17.

While the issues involved in resolving this permit appeal have proven more difficult to work out than originally anticipated, the parties have reached a full resolution and it appears that significant expenditures of the Board's adjudicative resources and the parties' litigation resources can be avoided. The requested extension of the stay is needed, however, to enable the agencies to process the agreed upon permit modifications.

CONCLUSION

For the reasons set forth above, and in the interest of promoting judicial economy and conserving public and private resources, the parties respectfully request that the Board order:

- (1) a continued stay of these proceedings until October 1, 2015; and
- (2) that the parties jointly or independently file a settlement negotiations status report(s) with the Board by September 4, 2015.

Respectfully submitted,

U.S. EPA – Region 1

General Electric Aviation



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Dated: April 14, 2015

CERTIFICATE OF SERVICE

I, Mark A. Stein, hereby certify that on June 23, 2015, a copy of EPA Region 1 and General Electric Aviation's "Fourth Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding," in the matter of General Electric Aviation (NPDES Permit No. 0003905), NPDES Appeal No. 14-03, was served on 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 Electronic Transmission (as agreed upon):

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Dated: June 23, 2015



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