



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
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VIA ELECTRONIC FILING

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 No. 10-17
NPDES Permit No. MA0003697
Barnhardt Manufacturing Company (Colrain, Massachusetts)

March 31, 2011

Dear Ms. Durr,

Enclosed please find the parties' Joint 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 served upon counsel of record today.

Sincerely,

Ronald A. Fein

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cc: Peter J. Feuerbach, Esq.
Keren Schlomy, Esq.

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

In re: Barnhardt Manufacturing Company)	
Colrain, Massachusetts)	NPDES Appeal No. 10-17
)	
NPDES Permit No. MA0003697)	
)	

JOINT STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), and the Barnhardt Manufacturing Company (“Barnhardt,” the permittee and petitioner), respectfully request that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter until July 22, 2011, to allow the parties to continue exploration of means of resolving this appeal without the need for litigation before the Board.

BACKGROUND

The Region reissued NPDES Permit No. MA0003697 (“Permit”) to Barnhardt on October 26, 2010. On November 24, 2010, Barnhardt filed a petition for review (“Petition”) with the Board contesting certain conditions of the Permit. On December 13, 2010, the Region and Barnhardt filed a joint motion to stay the proceedings for three months to allow the parties to explore settlement negotiations. *See In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17, Doc. No. 3 (Joint Motion to Stay Proceedings) (Dec. 13, 2010). In that motion, Barnhardt explained that, notwithstanding its reservation of its challenges to the Permit, Barnhardt planned to conduct trials at the facility of modified facility methods that might reduce the acute toxicity and/or ammonia nitrogen in its discharge. *Id.* at 2.

On January 11, 2011, the Board issued an order granting the parties' request and staying the proceedings until April 11, 2011. *In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17 (EAB Jan. 11, 2011) (Order Granting Joint Motion To Stay Proceedings). The Board directed the parties to file a joint report by April 1, 2011, explaining the status of this matter, including a discussion of whether it is appropriate to continue or modify the stay, or dismiss the Petition. *Id.*

STATUS REPORT

During December 2010 and January 2011, Barnhardt experimented with modified facility methods in the hope that they might reduce the acute toxicity and/or ammonia nitrogen in its discharge and potentially obviate the need for further litigation before the Board. Unfortunately, these initial trials did not meet with as much success as Barnhardt had hoped.

In March 2011, Barnhardt and the Region discussed the outcome of these initial trials and whether further trials might be worth pursuing. Most recently, Barnhardt has proposed to the Region a detailed plan for further experiments to be conducted and measured at the facility in April, May and June 2011. These trials would involve further experimental modifications to plant processes, in the hope that these modifications could result in reductions of Barnhardt's discharge of the effluents that are at issue in this appeal. The Region reviewed Barnhardt's proposal and concluded that it represents a good-faith, constructive attempt to improve the facility's discharge in a manner that could potentially obviate the need for litigation of the challenged effluent limits before the Board. Therefore, notwithstanding the results of the previous initial trials, the parties continue to believe that resolution of at least some of the issues in this appeal is possible.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The parties request that the Board extend the stay of proceedings to July 22, 2011. An extension of this length is reasonable and necessary given the need to develop technical

information to resolve the issues presented, because of the schedule required for Barnhardt's proposed process modification trials as well as laboratory sampling and reporting. Barnhardt plans to implement process modifications during the month of April, after which several more weeks (i.e., late May) are appropriate for the wastewater treatment facility to equilibrate, and then up to four more weeks (i.e., to late June) for water quality sampling and receipt of test results from the laboratory. The Region and Barnhardt intend to meet in late June or early July to discuss the results of these trials and to determine at that point what course of action will be most fruitful. Depending on the outcome of Barnhardt's trials and of the parties' subsequent discussions, it may be possible for the parties to narrow or resolve some or all of the issues raised in the Petition.

The parties propose to submit a status report no later than July 15, 2011, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

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 substantial possibility that at least some of the issues raised in the Petition may be resolved through settlement. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the parties request that the Board grant this motion and extend the stay of proceedings in this matter until July 22, 2011.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,

Ronald A. Fein

Ronald A. Fein, Assistant Regional Counsel

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BARNHARDT MANUFACTURING COMPANY

By its attorney,

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Date: March 31, 2011

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Status Report and Motion to Extend Stay of Proceedings were sent on March 31, 2011 to the following persons in the manner described below:

Posted to CDX electronic system

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
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Washington, D.C. 20460-0001

Copy by e-mail

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pfeuerbach@rubinrudman.com
kschlomy@rubinrudman.com

Signed: March 31, 2011

Ronald A. Fein
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