

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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ANN M. RICE
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ENVIR. APPEALS BOARD

February 14, 2013

Via U.S. First Class Mail

ATTN: 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 Newmarket Wastewater Treatment Plant*
NPDES Appeal No. 05-12
NPDES Permit No. NH0100196

Dear Ms. Durr:

Enclosed you will find an original plus five (5) copies of New Hampshire Department of Environmental Services' Objection to Motion to Strike Non-Party Amicus Brief for filing in the above-referenced matter.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Mulholland".

Evan J. Mulholland
Assistant Attorney General
Environmental Protection Bureau
(603) 271-3679

EJM/llm

Enclosures

cc: Clerk of the Board, United States EPA
cc: Mr. Samir Bukhari
cc: Mr. John C. Hall
cc: Mr. Thomas F. Irwin
cc: Mr. Michael T. Racine

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

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ENVIR. APPEALS BOARD

In the Matter of:)

Town of Newmarket)

Wastewater Treatment Plant)

NPDES Permit No. NH0100196)

NPDES Appeal No. 05-12

**NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES'
OBJECTION TO MOTION TO STRIKE NON-PARTY AMICUS BRIEF**

The New Hampshire Department of Environmental Services (NHDES) respectfully objects to the Motion to Strike Non-Party Amicus Brief filed by the Petitioner for the reasons specified below.

1. As a preliminary matter, the Petitioner failed to certify that the Motion to Strike had been served on NHDES. NHDES only obtained a copy through the Environmental Appeals Board (EAB) website.
2. Pursuant to the EAB's February 7, 2013 Order in this matter, the Petitioner was instructed to include in its reply brief (due on March 1, 2013) any comments it had on the NHDES's amicus brief. Petitioner's reply brief is limited to 25 pages.
3. Petitioner has presented no reason that the EAB cannot accept the amicus brief and give it due consideration, pursuant to the EAB's rules and procedures.

4. 40 C.F.R. § 22.11(b) allows the EAB to accept non-party amicus briefs on motion of an interested party. Once a motion to file an amicus brief is granted by the EAB, each party to the proceeding is permitted to file a response to the amicus brief. *Id.* Accordingly, the only recourse contemplated by the regulations is that: a response.

5. If a party believes that an amicus brief is not relevant, presents flawed legal arguments, or inaccurately characterizes the record, it is free to point out those deficiencies in its response. Striking an amicus brief based on these alleged deficiencies is not an appropriate remedy.

6. With respect to the merits of the Petitioner's arguments, NHDES maintains that the arguments are unfounded. NHDES encourages the EAB to carefully review the actual documents in the record, as well as all parties' briefs, as it makes its own decision on the merits of the Petition.

Wherefore, NHDES respectfully requests that the Petitioner's Motion to Strike be denied.

Dated: February 14, 2013



Evan J. Mulholland
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Objection to Motion to Strike Non-Party Amicus Brief in connection with NPDES Appeal No. 05-12, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

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

Mr. Samir Bukhari
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
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Michael T. Racine
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Dated: February 14, 2013



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