

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

In the Matter of:)	
)	
University of Massachusetts Boston)	
)	NPDES Appeal No. 13-04
NPDES Permit No. MA0040304)	
)	
)	

**JOINT INTERIM STATUS REPORT AND MOTION TO EXTEND STAY OF
PROCEEDINGS AND DEADLINE FOR REGION 1’S SUBMISSION
OF RESPONSE TO THE PETITION FOR REVIEW**

Respondent Region 1 of the United States Environmental Protection Agency (“Region”) and Petitioner University of Massachusetts Boston (“UMass Boston”) have made major efforts to attempt to settle this matter and have made substantial progress toward a settlement. There is still significant work to be done, however, and, as a result, the Region and UMass Boston jointly request that the Environmental Appeals Board (“Board”) extend the stay of the above-captioned matter until June 30, 2013, and move the due date for the Region’s Response to the Petition to July 31, 2013, in order to enable the parties to focus their limited resources on settlement efforts and to conserve Board resources by avoiding potentially unnecessary litigation.

BACKGROUND

On February 7, 2013, the Region issued National Pollutant Discharge Elimination System Permit No. MA0040304 to UMass Boston. On March 11, 2013, UMass Boston filed a petition with the Board requesting review of certain conditions of the permit. On

March 14, 2013, the Board, by letter, directed the Region to file a Response to the Petition, together with a certified index to the administrative record for the permit, no later than April 30, 2013. On March 29, 2013, the Region and UMass Boston jointly requested that the Board stay the above-captioned matter to allow the parties to attempt to negotiate resolution of the issues raised in the petition for review. On April 2, 2013, the Board granted the motion, ordered the parties to provide a status report by May 17, 2013, and set May 31, 2013 as the new deadline for the Region's Response to the Petition.

STATUS REPORT

Since the Board's April 2 Order, the parties and representatives from the Massachusetts Department of Environmental Protection, which co-issued the NPDES permit, have convened on three occasions to engage in settlement negotiations. These discussions have focused on technical/scientific issues as well as legal issues. The most recent session on May 2, 2013 included a site visit to the permitted facility in addition to further detailed settlement negotiations. As a result of these efforts, the parties have reached conceptual agreement on how to resolve the issues raised in the Petition for Review. Conceptually, resolution would ultimately involve, among other things, the withdrawal of the permit appeal and the issuance of a consented-to administrative compliance order containing interim limits and a schedule of steps for coming into compliance with the permit and/or determining whether modifications should be made to certain permit terms. While particular aspects of the parties' conceptual agreement are quite straightforward and appear to be fully resolved, others are more complicated and will require careful attention and continued discussion of the details. Among the next steps to advance the negotiation, the Region has agreed to prepare both a draft consented-

to administrative compliance order addressing the majority of issues and a draft letter addressing a smaller number of minor issues.

The Region expects, however, that, unless the due date for its Response to the Petition is pushed back, it will need to focus its resources on developing that Response rather than on immediately developing and negotiating the proposed documents necessary to settle this matter. Furthermore, once the Region files its Response, UMass Boston will need to focus resources on review of that Response and its options for how to respond thereto, rather than on the possible negotiated settlement of the matter. While this would not preclude the later resumption of settlement negotiations, it will certainly delay them and could ultimately derail them.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

In light of the foregoing, the Region and UMass Boston jointly request that the Board (1) extend the stay of these proceedings until June 30, 2013, (2) require the Region to file a status report on the settlement negotiations by June 30, 2013, and (3) extend the due date for the Region's Response to the Petition until July 31, 2013. The parties believe that, if the proceeding is stayed, they will be able to focus more fully on settlement negotiations at this time and will be able to either finalize the legal and technical issues involved in the settlement to which they have conceptually agreed or determine that settlement is not possible after all. Under the proposed timetable, the Region would inform the Board of the outcome in a status report filed by June 30, 2013. If settlement is not achievable, the Region would then have 30 days (i.e., until July 31, 2013) to prepare and file the index to the administrative record and its Response to the Petition.

CONCLUSION

For the foregoing reasons, and to conserve administrative and judicial resources, the parties respectfully request that the Board issue an order that: (1) extends the stay of the proceedings until June 30, 2013; (2) requires the Region to file a status report describing the results of settlement negotiations no later than June 30, 2013; and (3) requires the Region, absent resolution of the issues raised in the Petition for Review, to file the certified index to the administrative record and its Response to the Petition for Review by July 31, 2013.

Dated: May 6, 2013

U.S. EPA – Region 1

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion to Stay the Proceedings, in connection with In re University of Massachusetts Boston, NPDES Appeal No. 13-04, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
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Environmental Appeals Board
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Dated: May 6, 2013

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