



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

**VIA ELECTRONIC FILING**

August 28, 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: In re Town of Newmarket Wastewater Treatment Plant  
NPDES Permit No. NH0100196; NPDES Appeal No. 12-05**

Dear Ms. Durr:

Enclosed please find the Region's Response to Petitioner's Motion to Dismiss the Petition for Review, in connection with the above-captioned matter. Please note that, due to counsel's inadvertence, the Region prematurely filed a Response earlier today. The Region respectfully requests that the enclosed submission be substituted for that original filing and that the original filing be withdrawn.

Thank you for your assistance with this matter.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Samir Bukhari  
Assistant Regional Counsel  
US EPA – Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1095  
Fax: (617) 918-0095  
Email: [bukhari.samir@epa.gov](mailto:bukhari.samir@epa.gov)

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

_____	)	
In the Matter of:	)	
	)	
Town of Newmarket	)	
Wastewater Treatment Plant	)	NPDES Appeal No. 12-05
	)	
NPDES Permit No. NH0100196	)	
	)	
_____	)	

**REGION 1'S RESPONSE TO PETITIONER'S MOTION TO DISMISS**

EPA respectfully submits the following response to the Great Bay Coalition's Motion to Dismiss the Petition for Review of the Town of Newmarket NPDES Permit.

As grounds for its Motion to Dismiss, Petitioner states:

At a recent meeting of the parties discussing the peer review, EPA Regional Administrator Spaulding [sic] agreed to consider the outcome of the updated peer review in issuing any further NPDES permits to the Great Bay communities.

Motion at 1. EPA disputes this characterization of the Regional Administrator's position. Insofar as this statement suggests that EPA has agreed to delay NPDES permit issuance for other Great Bay communities, including Dover, pending the completion of the contemplated peer review process, or has otherwise predicated the outcome of any subsequent permit proceeding on the results of this future peer review, EPA objects to the motion. The peer review process is still in its very early stages, so it is uncertain when the peer review will be completed and what useful information it will provide. To the extent that this mistaken assumption constitutes grounds for the motion, EPA respectfully requests the motion be denied and the Board proceed to rule on the petition. Furthermore,

the issues in this case have been fully briefed and have been poised for decision for months following an extensive commitment of resources by all parties. EPA disputes that the issues of statutory and regulatory interpretation, among others, will be mooted by the further peer review. These issues will only have to be relitigated in the future, which would be a waste of scarce administrative and judicial resources. For this additional reason, the Region respectfully requests that the motion be denied.

Dated: August 28, 2013

/s/  
\_\_\_\_\_  
Samir Bukhari  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1095  
Fax: (617) 918-0095  
Email: [bukhari.samir@epa.gov](mailto:bukhari.samir@epa.gov)

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response to Petitioner's Motion to Dismiss in connection with NPDES Appeal No. 12-05, were sent to the following persons in the manner indicated:

By Electronic Filing:

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

By First Class U.S. Mail:

Mr. John C. Hall  
Hall & Associates  
1620 I Street, NW, Suite 701  
Washington, DC 20006-4033

Evan Mulholland, Assistant Attorney General  
Environmental Protection Bureau  
Department of Justice  
33 Capitol Street  
Concord, NH 03301

Thomas F. Irwin, Esq.  
Vice President & CLF New Hampshire Director  
Conservation Law Foundation  
27 North Main Street  
Concord, NH 03301

Michael T. Racine, Esq.  
PO Box 644  
Hillsborough, NH 03244

Dated: August 28, 2013

\_\_\_\_\_  
/s/  
Samir Bukhari  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square - Suite 100

Mail Code: ORA 18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1095  
Fax: (617) 918-0095  
Email: [bukhari.samir@epa.gov](mailto:bukhari.samir@epa.gov)