



UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
One Gateway Center - Suite 612
Newton, MA 02458-2881

TEL: 617-527-2980/3400
FAX: 617-527-6848

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DATE: September 2, 2009

TO: Eurika Durr, U.S. EPA FAX: 202-233-0121
Ronald A. Fein, Esq., U.S. EPA FAX: 617-918-1029
Deirdre C. Menoyo, Esq. FAX: 978-440-9692
Adam P. Kahn, Esq. and
Rebecca L. Puskas, Foley Hoag, LLP FAX: 617-832-7000

FROM: Robin Lepore, Senior Attorney

RE: NPDES Appeal Nos. 08-26, 08-27
Town of Wayland Wastewater Management District Commission

Opposition of the Department of the Interior to the Premature
Dismissal of this Appeal

TOTAL NUMBER OF PAGES (including this cover sheet): 5

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

In re: Town of Wayland,
Wastewater Management District Commission

NPDES Permit No. MA0039853

NPDES Appeal Nos.
08-26, 08-27

**OPPOSITION OF THE DEPARTMENT OF THE INTERIOR TO THE PREMATURE
DISMISSAL OF THIS APPEAL**

On September 1, 2009, the Office of the Regional Solicitor for the Department of the Interior (DOI) received the Order of the Environmental Appeals Judge proposing to immediately dismiss both Appeals filed concerning Permit No. MA0039853. Due to previously scheduled official travel and annual leave, Counsel for the DOI will not be in the office between tomorrow, September 3, 2009 and September 17, 2009. I have communicated my position with Mr. Ron Fein of the EPA directly and via an informal email with the other Parties, but will not be able to participate in the development of a joint response or other coordinated reply.

The settlement of these two cases was protracted. Our periodic Status Reports only hinted at the time-consuming efforts of all Parties to address the many issues in this case. Multiple meetings, telephone calls, site visits, and emails amongst the Parties were held or exchanged as we worked through the issues presented by this case. Without the effort and willingness of EPA, Region 1, to hire a professional mediator, and the ultimate willingness of each of the Parties to try to "stand in the others' shoes", it is unlikely that a four-Party settlement would have been achieved.

It was important to the DOI that the Settlement Agreement provides that the DOI will not dismiss its appeal until the permit modification, as put forth for public comment, is final. Obviously, since a federal agency cannot commit in advance to finalization of the modified

permit as proposed, should the EPA decide, based upon public comments it receives, that it will revise the permit again, the structure set forth in the Settlement Agreement allows for the DOI to then refrain from dismissing its Appeal. The fact that the Parties have, laboriously, reached a settlement does not mean that some other party may not file comments which the EPA finds to be meritorious. Therefore, EPA may yet choose to issue a different modification or no modification at all. While EPA procedures allow for the DOI to file another Appeal, due to its own procedures for initiating litigation, it will be more of a burden for the DOI to obtain clearance to bring another appeal than to refrain from dismissing a permit which contains a modification inconsistent with the terms of the Settlement Agreement.

Since the Settlement Agreement was reached only after a carefully nuanced and balanced exchange of trade-offs and compromises made by each of the four Parties, to upset this Agreement will put this Agreement at risk. The August 31, 2009 Order has already consumed additional time by a fellow federal agency to respond to this Order. It may cost the Town of Wayland additional legal fees.

This matter is not moot until the EPA issues a final modified permit with the agreed-upon terms, or substantially similar terms as determined by the appellants, and any appeal times have run. The Region's Fourth Status Report set out a clear explanation of the process to which the Parties have agreed, which allows adequate time for public notice and comment, EPA review and consideration of the public comments, issuance of the final permit modification reflecting such consideration, running of the time periods for filing an appeal, and consideration by the DOI and Mr. Arnold that the final permit is substantially similar to the agreed-to draft permit modification so each appellant can dismiss its appeal. The independent right of the DOI to review the final permit, without the need to file a new appeal and seek concurrence from two bureaus and higher Departmental officials before doing so, is an important right which is preserved under the Settlement Agreement.

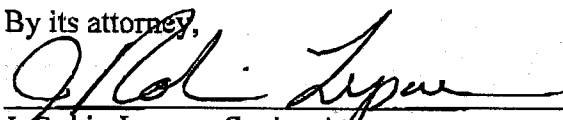
A hasty termination of this Appeal will alter that balancing of the risks of litigation and values obtained from reaching a settlement. This was a consideration of the DOI which underlay its willingness to agree to the settlement.

With all due respect to the Honorable Judge and other valid concerns for judicial efficiency, for the reasons set forth above, the Department of the Interior strongly opposes a premature dismissal of this Appeal until the events and time frames carefully worked through by the Parties have occurred.

Respectfully submitted,

UNITED STATES DEPARTMENT OF THE INTERIOR

By its attorney,



J. Robin Lepore, Senior Attorney
United States Department of the Interior
Office of the Solicitor
One Gateway Center – Suite 612
Newton, MA 02458-2881
617-527-2980
Date: September 2, 2009

CERTIFICATE OF SERVICE

I, Maureen P. Neilan, hereby certify that copies of the foregoing Opposition of the Department of the Interior to the Premature Dismissal of this Appeal in the matter of Wayland Wastewater Management, NPDES Appeal Nos. 08-26 and 08-27, were sent on the 2nd day of September 2009 to the following persons in the manner described below:

Original by U.S. First-Class Mail
Copy by Fax

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, DC 20460-0001
Fax: 202-233-0121

Copy by U.S. First-Class Mail
Copy by Fax
Copy by E-mail

Ronald A. Fein, Esq.
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
Fax: 617-918-1029

Copy by U.S. First-Class Mail
Copy by Fax
Copy by E-mail

Deirdre C. Menoyo, Esq.
388 Willis Road
Sudbury, MA 01776
Fax: 978-440-9692

Copy by U.S. First-Class Mail
Copy by Fax
Copy by E-mail

Adam P. Kahn, Esq.
Rebecca L. Puskas
Foley Hoag, LLP
155 Seaport Boulevard
Boston, MA 02210
Fax: 617-832-7000

Copy by U.S. First-Class Mail
Copy by E-mail

Thomas B. Arnold
20 Kendall Road
Sudbury, MA 01776

Signed: September 2, 2009


Maureen P. Neilan