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**ISLAND FUTURES GROUP, INC.**  
**Box 1392**  
**Newburyport, MA 01950**

2004 JUL 27 AM 11: 04

**(978) 862-7777** PEALS BOARD

July 28, 2004

By USPS Express Mail

Ms. Eurika Durr  
Environmental Appeals Board  
U.S. EPA  
1341 G Street, N.W.  
Suite 600  
Washington, D.C. 20005

Subject: NPDES Appeal No. 04-05  
City of Newburyport Wastewater Treatment Facility

Dear Ms. Durr:

We are pleased to file this Response to Judge Reich's Order dated July 20, 2004. Please place it in the appropriate channels and accept our thanks for your help.

I hereby certify that copies of this Response have been sent to the parties in the attached Service List by pre-paid, first-class mail.

Yours very truly,

  
M. R. Eigerman  
Petitioners' Representative

Service List

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached response to Order Extending Time to File a Response and Setting Deadline for Responding to the Region's Motion to Consolidate Proceedings in the matter of City of Newburyport, Wastewater Treatment Plant, NPDES Appeal No. 04-05, were sent to the following persons in the manner indicated:

First Class Mail

Tonia Bandrowitz  
U.S. EPA Region I

Postage Prepaid

Office of Regional Counsel (SEL)  
One Congress Street  
Boston, MA 02114-2023

Barry P. Fogel  
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Boston, MA 02110-3113

Dated: 7/28/04

  
M. R. Eigerman  
Island Futures Group

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(978)852-7777  
ENVIRONMENTAL APPEALS BOARD

Judge Edward E. Reich  
Environmental Appeals Board,  
MC-1103B  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave, N.W.  
Washington, D.C. 20460

*July 28, 2004*

Subject: NPDES Appeal No. 04-05  
City of Newburyport Wastewater Treatment Facility

Dear Judge Reich:

In response to your Order dated July 20, 2004, our Board has directed me to respond to three issues; 1) consolidation of the two petitions filed in connection with the NPDES Permit, 2) a stay of the proceedings and, 3) any additional extensions beyond August 6, 2004 for the Region's Response Date.

We have not received a copy of the Region's Motion, and therefore cannot frame our comments in terms of its precise language.

Nonetheless, basing our response solely on the portion of the Motion quoted in your order, we would have no objection to a consolidation of the applicant's and our appeals if such consolidation would not result in a postponement of the Region's Response Date and the actual adjudication of the issues raised in IFG's petition filed June 9. We note that in the matter of the City's petition on the same NPDES permit, the EAB has already granted a joint motion by Region I and the applicant to extend the deadline for the agency's Response to October 29, 2004. If consolidation—however appealing it is as a proposition of logic and judicial efficiency—automatically pushes the schedule for even beginning a consolidated proceeding into late October, we must oppose it.

Any delay in adjudicating of our petition is inimical to the public's interest in two ways. First, delay simply side-steps known problems in the Merrimack River estuary by allowing the applicant to operate indefinitely under a 1998 NPDES Permit issued in error: i.e., to discharge effluent, including total residual chlorine levels hazardous to marine life, which violates the requirements of the Clean Water Act.

Second, delay would fail to prevent new, even higher levels of pollution discharge that will further degrade the estuary. The City of Newburyport is currently

increasing the size of its West End sewer mains to accommodate an additional 150,000 gallons per day of flow generated by on-going and planned development. Within 36 months, the City plans another, massive increase in sewer flow—at least 435,000 gallons per day as a consequence of a sewer extension through salt marsh areas and the barrier island known as Plum Island. Unfortunately, the state's environmental review process on this latter proposal illogically and impermissibly excluded any consideration of the municipal treatment works at the end of proposed sewer system. That is, the project was segmented in such a manner as to exclude the municipal treatment plant, its performance and the impacts of its effluent.

As a result, the present NPDES petitions, although procedurally unconnected to beginning the Plum Island project promoted by the City, nonetheless are inextricably tied by common sense and sound environmental policy to the public's interest in defending the Merrimack estuary from further insult.

Hence, the real-world consequences of a delay in hearing our issues and in the Court's rendering a decision are to invite new mischief in "negotiations" about black-letter requirements, and larger, more expensive environmental problems. Once the City begins its \$23,000,000 Plum Island utility project this summer, as it surely intends to do, the "snowball effect" cannot help but strengthen its negotiating position with respect to NPDES and Region I. (The Massachusetts Department of Environmental Protection, joint issuer of NPDES permits in the Commonwealth, is also the prime mover behind the Plum Island Project and not disposed to see its efforts of four years go unrewarded.)

For these reasons, we oppose any stay in the hearing of our petition and in the extension of the August 6, 2004 deadline for Region I's response. IFG commented extensively more than a year ago on the "diverse issues" the Region states it needs more time to review. Together with our technical expert, we met at length in August 2003 with the Region I staff who prepared the draft NPDES permit. In our view, there can be little mystery left on what is known to be unknown about the municipal treatment plant's capabilities.

Your Honor, we pray to be heard with dispatch, both in the hope of ending the present harm done by the Applicant and of preventing new injury to the estuary, its wildlife and to the people denied full enjoyment of their resource by pollution.

Yours very truly,

  
M. R. Eigerman,  
Island Futures Group, Inc.

cc: Service List (attached)  
Conservation Law Foundation, Boston