



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
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ENVIR. APPEALS BOARD

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To: Eurika Durr, Clerk of the Board
Environmental Appeals Board
Fax (202) 233-0121

Frederick J. McNeill, P.E., Chief Engineer
City of Manchester, Highway Department
Fax (603) 628-6234

From: Ronald Fein, EPA Region 1 *RF*

Date: March 16, 2009

Number of pages including cover: 5

Return Fax: 617-918-0040

Message:

NPDES Appeal No. 08-21

NPDES Permit No. NH0100447

City of Manchester, New Hampshire

Status Report and Motion to Extend Stay of Proceedings



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

**ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023**

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ENVIR. APPEALS BOARD

VIA FAX AND VIA FIRST CLASS MAIL

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, D.C. 20460-0001

Re: NPDES Appeal No. 08-21
NPDES Permit No. NH0100447
City of Manchester, New Hampshire

March 16, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's assented-to Status Report and Motion to Extend Stay of Proceedings in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have also been mailed to the Board and to the petitioner today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein", is placed below the word "Sincerely,".

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

cc: Frederick J. McNeill, P.E., City of Manchester

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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 re: City of Manchester, New Hampshire
NPDES Permit No. NH0100447

NPDES Appeal No. 08-21

**STATUS REPORT AND
MOTION TO EXTEND STAY OF PROCEEDINGS**

Region 1 ("Region") of the United States Environmental Protection Agency (the Respondent), with the assent of the City of Manchester, New Hampshire (the permittee and Petitioner), respectfully requests that the Environmental Appeals Board ("Board") extend the stay of proceedings in the above-captioned matter until May 20, 2009, to allow the parties to undertake settlement negotiations.

BACKGROUND

The Region reissued NPDES Permit No. NH0100447 ("Permit") to Petitioner on September 25, 2008. On October 24, 2008, Petitioner filed a petition for review with the Board contesting conditions of the Permit related to aluminum and sludge. On October 28, 2008, the Board directed the Region to prepare a response that addresses Petitioner's contentions and whether Petitioner has satisfied the requirements for obtaining review.

On November 28, 2008, the Region and Petitioner submitted a Joint Motion to Stay Proceedings pending settlement discussions. On December 3, 2008, the Board granted the motion. *See In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, Dec. 3, 2008) (Order Granting Joint Motion to Stay Proceedings). The Board ordered the

In re City of Manchester, New Hampshire
NPDES Appeal No. 08-21

parties to submit a status report by March 18, 2009, regarding the status of settlement negotiations, including a discussion of whether it is appropriate to continue the stay, dismiss the petition, or establish a schedule for the Region to file a response to the petition.

STATUS UPDATE

Since the Board's order, the parties (along with the New Hampshire Department of Environmental Services) have engaged in detailed technical discussions pertaining to aluminum (the effluent limits for which were contested in the Petition) and believe that they have made substantial progress in this area, and that settlement is likely. However, the parties have not yet reached final agreement on all issues, and need more time to do so.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The Region, with the assent of Petitioner, requests that the Board extend the stay of proceedings by approximately two months, until May 20, 2009. The parties propose to submit a status report no later than May 20, 2009, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

An extension of this length is reasonable and necessary given the need to resolve complex technical issues pertaining to aluminum sampling in the receiving water body, and the need to consult with the New Hampshire Department of Environmental Services.

If a stay is not granted, the Region and the Board will be forced to divert their time and effort to legal proceedings, when there is a substantial possibility that all or some of the issues raised in the petition for review may be resolved through settlement discussions. Accordingly, to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the Region requests that the Board grant this motion and

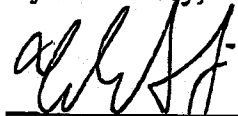
In re City of Manchester, New Hampshire
NPDES Appeal No. 08-21

extend the stay. Undersigned counsel represents that he has received a communication from Petitioner confirming that Petitioner assents to this motion.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,



Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040
Date: March 16, 2009

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report and Motion to Extend Stay of Proceedings were sent on the 16th day of March 2009 to the following persons in the manner described below:

Original by first class mail
Copy by fax
Copy posted to CDX electronic system

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, D.C. 20460-0001

Fax (202) 233-0121

Copy by first class mail
Copy by fax

Frederick J. McNeill, P.E.
Chief Engineer
City of Manchester, Highway Department
Environmental Protection Division
300 Winston Street
Manchester, NH 03103

Fax (603) 628-6234

Signed: March 16, 2009

