



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

**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

May 19, 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 "Ronald A. Fein", is positioned above the typed name.

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

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

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 July 1, 2009, to allow the parties to complete settlement negotiations.

**BACKGROUND**

The Region reissued NPDES Permit No. NH0100447 ("Permit") to Petitioner on September 25, 2008. On October 24, 2008, Petitioner filed with the Board a petition for review ("Petition") 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. Since then, the Board has twice granted the parties' requests to stay the proceedings pending settlement discussions. *See In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, Dec. 3, 2008) (Order Granting Joint Motion to Stay Proceedings); *In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, Mar. 24, 2009) (Order Granting Motion to Extend Stay of Proceedings).

In its March 24, 2009 order, the Board ordered the parties to submit a status report by May 20, 2009, regarding the status of settlement negotiations, including a discussion of whether it is appropriate to further extend the stay, dismiss the petition, or establish a schedule for the Region to file a response to the petition.

### **STATUS UPDATE**

The parties have made substantial progress towards settlement, but need more time to complete and finalize settlement, as described below.

1. On May 18, 2009, the Region issued a minor permit modification correcting a clerical error in the sludge monitoring condition. This will resolve the Petition's challenge to the Permit's required frequency of sludge monitoring.

2. With respect to aluminum, the two parties, along with the New Hampshire Department of Environmental Services ("NHDES"), have made substantial progress, but have not yet reached final resolution.

On May 18, 2009, the Region sent Petitioner, for its review, a draft administrative compliance order ("Draft Order"). The Draft Order, if finalized and issued by the Region, would direct Petitioner to: (1) conduct a 12-month study of aluminum and hardness in the Merrimack River, pursuant to an aluminum sampling protocol prepared by NHDES; (2) submit to EPA and NHDES a report documenting the results of that study and proposing an implementation schedule for further action based on the results thereof; and (3) comply with interim monitoring requirements set forth in the Draft Order.

A negotiated compliance order would resolve the issues presented in the Petition without need for litigation before the Board. However, the parties need more time to negotiate the details of the compliance order.

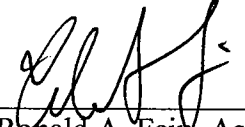
### **REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The Region, with the assent of Petitioner, requests that the Board extend the stay of proceedings until July 1, 2009. The parties propose to submit a status report no later than July 1, 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 negotiate and finalize the details of an administrative compliance order. The parties believe that, absent any unforeseen circumstances, they will be able to complete this negotiation and any additional steps necessary to resolve the issues raised in the Petition within the proposed timeframe, and that further proceedings before the Board will not be necessary.

If, however, 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 high probability that the remaining issue raised in the petition for review will be resolved through a negotiated compliance order. 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 extend the stay. Undersigned counsel represents that he has received a communication from Petitioner confirming that Petitioner assents to this motion.

Respectfully submitted,

  
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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: May 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Status Report and Motion to Extend Stay of Proceedings were sent on the 19th day of May 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

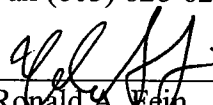
Fax (202) 233-0121

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: May 19, 2009

  
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Ronald A. Fein