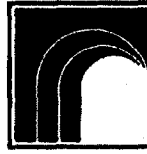


RECEIVED  
U.S. E.P.A.**FACSIMILE  
TRANSMITTAL FORM****RUBIN AND  
RUDMAN LLP**  
Attorneys at Law

2011 OCT 28 PM 2: 21

ENVIRONMENTAL APPEALS BOARD

T: 617.330.7000 F: 617.330.7550  
50 Rowes Wharf, Boston, MA 02110FROM: Peter J. Feuerbach, Esq. DATE: 10/28/2011

RECEIVING PARTY NAME:	RECEIVING PARTY TELEPHONE #:	RECEIVING PARTY FAX #:
Eurika Durr, Clerk of the Board Environmental Appeals Board (MC 1103B)		202-233-0121

Client #:	14914	Matter #:	001	Pages to follow:	6
-----------	-------	-----------	-----	------------------	---

Note: If you have a question or problem regarding this transmission, please call the Rubin and Rudman Copy Center at (617) 330-7053

Original will follow: Yes**MESSAGE:**

Re: NPDES Appeal No. 10-17  
NPDES Permit No. MA0003697  
Barnhardt Manufacturing Company (Colrain, Massachusetts)

Dear Ms. Durr:

Please see that attached letter and Assented To Motion to Withdraw Petition.

Thank you.

Peter Feuerbach

**\*\*THIS FACSIMILE TRANSMISSION IS INTENDED SOLELY FOR THE USE OF THE SPECIFIC INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any disclosure, distribution, dissemination, copying, use or the taking of any action based on the contents of this transmission is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone number (collect) and return the original message to us via the U.S. Postal Service. Thank you.\*\***

Disclosure Under IRS Circular 230: To ensure compliance with requirements recently imposed by the IRS, we inform you that any tax advice contained in this communication, including any attachments, was not intended or written to be used, and cannot be used, for the purpose of avoiding federal tax related penalties or promoting, marketing or recommending to another party any tax related matters addressed herein.

1227436\_1

RECEIVED  
U.S. E.P.A.

2011 OCT 28 PM 2:21

ENVIR. APPEALS BOARD

RUBIN AND  
RUDMAN LLP  
Attorneys at LawT: 617.330.7000 F: 617.330.7550  
50 Rowes Wharf, Boston, MA 02110Peter J. Feuerbach  
Direct Dial: (617) 330-7136  
E-mail: pfeuerbach@rubinrudman.com

October 28, 2011

**By Facsimile 202-233-0121 and  
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. 20460-0001Re: NPDES Appeal No. 10-17  
NPDES Permit No. MA0003697  
Barnhardt Manufacturing Company (Colrain, Massachusetts)

Dear Ms. Durr,

Enclosed please find the petitioner's Assented to Motion to Withdraw Petition in the above-captioned case, with an attached certificate of service. The Assented to Motion and the certificate of service have also been served upon counsel of record today.

Thank you for your assistance and consideration. Please contact me if you have any questions.

Very truly yours,

Peter J. Feuerbach

PJF/ees

Enclosure

cc: Client (w/encl.)  
Ronald A. Fein, Esquire, USEPA Region 1 (w/ encl.)

1227362\_1

WWW.RUBINRUDMAN.COM

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

In re: Barnhardt Manufacturing Company  
Colrain, Massachusetts

NPDES Permit No. MA0003697

NPDES Appeal No. 10-17

**ASSENTED TO MOTION TO WITHDRAW PETITION**

The Barnhardt Manufacturing Company ("Barnhardt," the permittee and petitioner), with the assent of Region 1 ("Region") of the United States Environmental Protection Agency (the Respondent), requests to withdraw its petition in the above-captioned matter on the basis that the Board has indicated that it would likely not grant a further stay of the proceedings beyond October 28, 2011 and Barnhardt has begun discussions with the Region on a potential compliance order concerning one item of the appeal (i.e., the LC50, acute toxicity test) as well as a potential modification to one item of the permit (i.e., the effluent flow).

**BACKGROUND**

The Region reissued NPDES Permit No. MA0003697 ("Permit") to Barnhardt on October 26, 2010. On November 24, 2010, Barnhardt filed a petition for review ("Petition") of the Permit, contesting conditions related to acute toxicity, nitrogen, and ammonia-nitrogen.

On December 13, 2010, the Region and Barnhardt filed a joint motion to stay the proceedings for three months to allow the parties to explore settlement negotiations. *See In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17, Doc. No. 3 (Joint Motion to Stay Proceedings) (Dec. 13, 2010). In that motion, Barnhardt explained that, notwithstanding its reservation of its challenges to the Permit, Barnhardt planned to conduct trials at the facility of modified facility methods that might reduce the acute toxicity and/or ammonia nitrogen in its discharge. *Id.* at 2.

The Board granted the stay. *See In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17 (EAB Jan. 11, 2011) (Order Granting Joint Motion To Stay Proceedings).

On March 31, 2011, the parties filed a joint motion to extend the stay. *See In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17, Doc. No. 7 (Joint Status Report and Motion to Extend Stay of Proceedings) (Mar. 31, 2011). The joint status report stated that Barnhardt had experimented with modified facility methods in the hope that they might reduce the acute toxicity and/or ammonia nitrogen in its discharge and potentially obviate the need for further litigation before the Board, but these trials had not yet met with success. *See id.* at 2. The parties requested an additional extension to July 22, 2011, so that Barnhardt could test additional process modifications. *See id.* at 2-3.

On April 1, 2011, the Board granted the parties' motion and stayed the proceedings until July 22, 2011. *See In re Barnhardt Mfg. Co.*, NPDES Appeal No. 10-17 (Order Granting Joint Motion to Extend Stay of Proceedings) (Apr. 1, 2011). The Board also ordered the parties to file a joint report on July 15, 2011, explaining the status of this matter, including a discussion of whether it is appropriate to continue or modify the stay, or dismiss the petition. *See id.* at 1-2.

In July 2011, the parties reported that, since April 2011, Barnhardt continued its efforts to improve the quality of its effluent discharge to satisfy the limits in its permit regarding acute toxicity. Specifically, Barnhardt conducted bench and plant trials to reduce total dissolved solids (TDS) in the effluent, which is believed to be the major contributing factor to the acute toxicity parameter. For instance, since April, Barnhardt took steps to improve the filtration and quality of the incoming process water, reduce the amount of concentrated reclaim water, utilize a different grade of caustic, reduce the amount of caustic used in certain product lines, and substitute enzymes for caustic in certain product lines. In mid-May 2011, Barnhardt conducted additional acute toxicity testing that was not required under its permit in an effort to assess the preliminary results of its trials. The test results for effluent that was sampled in mid-May indicated that

Barnhardt had achieved success in reducing TDS and complying with the acute toxicity limit. Barnhardt has indicated that it is achieving compliance with the permit limitation relative to ammonia nitrogen. On June 28, 2011, representatives of Barnhardt, the Region, and the Massachusetts Department of Environmental Protection met in Boston to discuss Barnhardt's trials, effluent sampling results, and plans for additional trials in the coming months.

In July 2011, the parties request that the Board extend the stay of proceedings to October 28, 2011. An extension of this length was deemed reasonable and necessary given the need to develop technical information to resolve the issues presented, because of the schedule required for Barnhardt's proposed process modification trials, laboratory sampling, and further analysis and discussions. The Board granted the stay to October 28, 2011, but indicated that, because it was the third request, any further request for a stay would likely be disfavored.

Barnhardt needed additional time to perform additional trials involving reduced use of caustics for certain product lines as well as to ensure that the positive test results that it achieved in mid-May were in fact repeatable and the permit limit for acute toxicity is achievable. Barnhardt believed that, by October 2011, it would be in a position to decide whether, from its perspective, the Permit can be complied with on a consistent basis and the appeal dismissed and/or a compliance order negotiated, or whether adjudication of the Petition will be necessary. To that end, Barnhardt conducted its quarterly acute toxicity test in mid-July and October as required in its permit, as well as voluntarily non-required acute toxicity testing in August and September 2011. Barnhardt's results for July and October satisfied the permit conditions for LC50, however the results for August and September did not satisfy the LC50 condition. Barnhardt believes that the August test was affected by a certain customer product being processed and that the September test was affected by the disruptions to the plant caused by the severe flooding caused by tropical storm Irene.

Because it was not able to satisfy the LC50 limit in the August and September tests, Barnhardt is not completely assured that the positive test results that it has achieved are repeatable on a consistent basis and the permit limit for acute toxicity is achievable. Given that the Board has indicated that it would likely not grant a further stay, Barnhardt has begun discussions with the Region on a compliance order concerning one item of the appeal (i.e., the LC50, acute toxicity test) as well as a modification to one item of the permit (i.e., the effluent flow). The Region has agreed that Barnhardt has thus far appeared to be engaged in good-faith, constructive efforts to reduce its discharge of pollutants, and has begun discussions with Barnhardt on a potential compliance order and permit modification.

Based upon the foregoing, Barnhardt requests to withdraw its petition.

(rest of page intentionally blank)

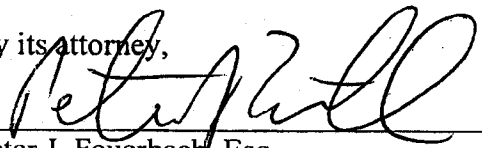
1227364\_2

4

Respectfully submitted,

**BARNHARDT MANUFACTURING COMPANY**

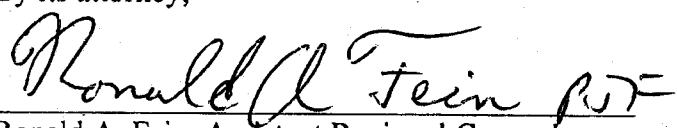
By its attorney,

  
Peter J. Feuerbach, Esq.  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110  
(617) 330-7136  
Fax: (617) 330-7550  
Date: 10/28/11

**ASSENTED TO:**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1**

By its attorney,

  
Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mailcode ORA18-1)  
Boston, MA 02109-3912  
617-918-1040  
Fax: 617-918-0040  
Date: 10/28/11

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Assented to Motion to Withdraw was sent on October 28, 2011 to the following persons in the manner described below:

Copy by e-mail

Ronald A. Fein, Esq.

Fein.Ronald@epamail.epa.gov

Signed: October 28, 2011

