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ENVIR. APPEALS BOARD  
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The firm has attorneys who  
are also admitted to practice in  
California, District of Columbia,  
Idaho, and Vermont

October 21, 2005

**VIA FIRST CLASS MAIL**

United States Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

Re: *City of Marlborough Westerly Wastewater Treatment Facility*  
*NPDES No. MA0100480; Appeal Nos. NPDES 05-05 and 05-09*  
*Town of Maynard Water Pollution Control Facility*  
*NPDES No. MA0101001; Appeal Nos. NPDES 05-06 and 05-12*  
*Town of Westborough Wastewater Treatment Plant*  
*NPDES No. MA0100412; Appeal Nos. NPDES 05-07 and 05-08*

Dear Clerk:

Per your request, enclosed please find 5 originals of the Motion in Opposition to Stay Proceedings from the Organization for the Assabet River ("OAR") and Certificate of Service, which was filed on October 19<sup>th</sup>.

Thank you for your attention to this.

Sincerely,



Kenneth L. Kimmell

KLK/mej  
Enclosures

I:\Clients\OAR\Let EPA Motion in Opposition to Stay Proceedings 10-21-05.oar.doc

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BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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IN RE	)	ENVIR. APPEALS BOARD
	)	
City of Marlborough Westerly Wastewater	)	
Treatment Facility	)	
NPDES No. MA0100480	)	
Appeal Nos. NPDES 05-05 and 05-09	)	
	)	
Town of Maynard Water Pollution	)	
Control Facility	)	
NPDES No. MA0101001	)	
Appeal Nos. NPDES 05-06 and 05-12	)	
	)	
Town of Westborough Wastewater	)	
Treatment Plant	)	
NPDES No. MA0100412	)	
Appeal Nos. NPDES 05-07 and 05-08	)	
	)	

**MOTION IN OPPOSITION TO STAY PROCEEDINGS**

The Organization for the Assabet River ("OAR") hereby opposes the Region's Motion to Stay Proceedings for the following reasons:

1. With respect to OAR's appeal of the Maynard permit, there is no justification for a stay as both OAR *and* Maynard have declined to participate in mediation. Thus, there is *no* likelihood that the contested issues in the Maynard case will be resolved via mediation, as the key participants are not involved in the process.
  
2. With respect to Marlborough and Westborough, all of the stakeholders in the permit process (EPA, DEP, the permittees, and OAR) have spent *years* discussing these permits, and have been unable to find common ground. There is absolutely no reason to expect that a neutral mediator will find a solution which has evaded all of these knowledgeable parties for all of these years. Thus, to OAR a stay on this proceeding will do nothing but forestall the inevitable time when the Region must respond to OAR's Petition, or seek a voluntary remand in light of the Environmental Appeals Board decision in City of Marlborough Easterly Wastewater Treatment Facility, 12 E.A.D. \_\_\_, NPDES Appeal No. 04-13.
  
3. For these reasons, the prospect of mediation (which is apparently a month away from even beginning and many months away from being completed) is not a sufficient basis to impose a stay on the proceedings. And it is prejudicial, as delay harras the river by forestalling compliance with the requisite new permit limits.

4. That being said, OAR does not oppose an additional extension of time for EPA to file its brief. OAR would not object to an extension of time until November 21 for that purpose, as long as it is clear that the brief must be filed by that time absent an actual agreement by all parties to further extend the deadline.

THE ORGANIZATION FOR THE ASSABET RIVER

By its Attorney,



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Dated: October 19, 2005

**CERTIFICATE OF SERVICE**

I certify that I caused to be served by first class mail a copy of the Motion in Opposition to Stay Proceedings to:

Samir Bukhari, Esq.  
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U.S. EPA, Region 1  
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Dated: October 19, 2005

  
Kenneth L. Kimmell