



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

VIA ELECTRONIC FILING

October 9, 2015

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

**RE: City of Nashua Wastewater Treatment Facility
NPDES Permit Appeal No. 15-06; NPDES Permit No. MA0100170**

Dear Ms. Durr:

Please find a Status Report and Fourth Joint Motion to Stay the Proceedings in connection with NPDES Appeal No. 15-06.

Sincerely,

Samir Bukhari
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Enclosures

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

In the Matter of:)	
)	
)	
City of Nashua)	
Wastewater Treatment Facility)	NPDES Appeal No. 15-06
)	
NPDES Permit No. NH0100170)	
)	

**STATUS REPORT AND FOURTH JOINT MOTION
TO STAY THE PROCEEDINGS**

I. Background

On April 13, 2015, the City of Nashua, New Hampshire filed a Petition for Review (“Petition”) with the Environmental Appeals Board (“Board”) requesting review of certain conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by Region 1 of the United States Environmental Protection Agency (“Region”) authorizing discharges of wastewater effluent from the City’s Wastewater Treatment Facility to the Merrimack River, as well as from nine Combined Sewer Overflows to the Merrimack and Nashua Rivers.

On July 7, 2015, the City and Region filed a joint motion requesting the Board to stay proceedings in the case to allow the parties to pursue settlement discussions. The Board granted the motion, ordering the parties to file a joint status report by August 5, 2015, and staying the proceedings until August 14, 2015. *See Order Granting Stay of Proceedings* at 2 (July 5, 2015).

The parties subsequently filed a Joint Status Report and Second Motion to Stay the Proceedings (July 31, 2015), in which they described the status of the settlement negotiations and requested an additional 45 day stay to allow sufficient time for, *inter alia*, the City to develop its counter offer to the Region's most recent settlement communication. The Board granted a stay until September 28, 2015, and directed the parties to file a status report no later than September 14, 2015, and to recommend steps to efficiently resolve the Petition. *See Order Extending Stay of Proceedings* at 2 (August 13, 2015).

The parties timely filed this status report, informing the Board that on September 9, 2015, the City had transmitted a written counter offer to the Region. The parties described several actions they would take prior to expiration of the stay to facilitate an efficient resolution of this matter. This included a commitment by the Region to immediately commence its review of the counter offer. The parties also committed to convene to a meeting to attempt a resolution of any remaining issues in dispute. *See Joint Status Report* at 2 (September 14, 2015). To allow this meeting to occur and negotiations to conclude in an orderly manner, the parties filed a Third Joint Motion to Stay the Proceedings (September 22, 2015), which the Board granted, requiring the parties to inform the Board of the status of the matter by October 13, 2015. *See Third Order Extending Stay of Proceedings* (September 25, 2015).

II. Status Report and Grounds for Extending the Stay

The parties met in Nashua on September 28, 2015. Based on that meeting and a subsequent exchange of information, the parties have arrived at a comprehensive settlement that resolves all the issues in the City's Petition.

The parties have agreed on the following course of action to effectuate the settlement:

1. The settlement will be implemented through a permit modification.
2. Prior to publication of the draft permit modification, the City will be provided with an opportunity to review the modification to ensure that it accurately reflects the terms of the settlement, which have been clearly detailed in written correspondence between the parties.
3. Upon the parties concurring that the draft permit modification accurately reflects the settlement terms, the parties will file a joint motion to dismiss the Petition in its entirety.
4. At that time, the Region will commence permit modification proceedings by releasing the draft permit for public notice and comment.

The Region estimates that it will require 60 days to draft the permit modification and fact sheet, and complete internal technical and legal reviews. The draft permit modification and associated documentation will need to be reviewed by the New Hampshire Department of Environmental Services (“NHDES”), which in the Region’s experience typically requires two weeks to complete this task. Once the permit modification is drafted and agencies’ reviews complete, the City will require two weeks to review it and provide its concurrence. The Region will then need to prepare the draft permit modification package for public notice and comment, an administrative task that typically requires one week.

In light of the foregoing, the parties estimate that they will require a 120-day stay of the proceedings. The duration of the stay will allow for the steps necessary to

implement the settlement to occur in a deliberate, but still expeditious, fashion, while also providing the parties with a limited margin to account for any unforeseen delays, and account for absences of staff over the holidays, without having to seek a further extension from the Board.

The parties propose to file status reports with the Board at the following intervals or upon the following events:

1. Thirty days, at which time the Region will report on the progress of drafting the permit modification documents and whether the Region expects to meet the projected 60-day timeline for completion of that task;
2. Sixty days, at which time the Region will indicate whether the draft permit documents have been submitted to NHDES for their internal review and, if not, the date upon which such a transmittal will occur;
3. Ninety days, or the date upon which the draft permit modification is transmitted to the City for their review and concurrence, whichever is sooner.
4. The date upon which concurrence by the City is received, at which point the parties would also jointly move to have the matter dismissed with prejudice.

III. Requested Relief

For these reasons, and to conserve administrative and judicial resources, the parties respectfully request that the Board issue an order (1) extending the stay of the proceedings for 120 days and (2) directing the Region and/or parties to file status reports consistent with the parties' proposed schedule.

Dated: October 9, 2015

Respectfully submitted,

U.S. EPA – Region 1

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Status Report and Fourth Joint Motion to Stay the Proceedings, in connection with In re City of Nashua Wastewater Treatment Facility, NPDES Appeal No. 15-06, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
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Dated: October 9, 2015

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