



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
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BOSTON, MASSACHUSETTS 02114-2023

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REGIONAL BOARD

August 18, 2005

VIA ELECTRONIC AND EXPRESS MAIL

U.S. Environmental Protection Agency
Attn: Eureka Durr
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Motion for Extensions of Time to File Response Briefs

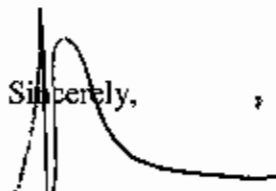
City of Marlborough Westerly Wastewater Treatment Facility
Appeal Nos. NPDES 05-05 and 05-09
Town of Maynard Water Pollution Control Facility
Appeal Nos. NPDES 05-06 and 05-12
Town of Westborough Wastewater Treatment Plant
Appeal Nos. NPDES 05-07 and 05-08
Town of Hudson Wastewater Treatment Facility
Appeal No. NPDES 05-11

Dear Ms. Durr:

Enclosed is a Motion for Extensions of Time to File Response Briefs submitted by EPA-New England Region in the above-referenced NPDES permit appeals.

Please file this motion in your usual manner. If you should have any questions, please do not hesitate to contact me at 617-918-1095.

Sincerely,


Samir Bukhari
Attorney Advisor
Office of Regional Counsel
US EPA-Region 1

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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Enclosure

cc: Joseph M. Hamilton, Esq., Town of Westborough
David Owen, Interim Administrator, Town of Maynard
Donald Anglehart, Esq., City of Marlborough
Tony Loura, Board of Selectmen, Town of Hudson
Kenneth L. Kimmell, Esq., Organization for the Assabet River
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Linda Murphy, EPA-Region 1
Roger Janson, EPA-Region 1
Carl Dierker, EPA-Region 1
Ann Williams, EPA-Region 1

05-01-12

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BEFORE THE ENVIRONMENTAL APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN 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)
)
Town of Hudson Wastewater)
Treatment Facility)
NPDES No. 0101788)
Appeal No. NPDES 05-11)
)
)
)

MOTION FOR EXTENSIONS OF TIME TO FILE RESPONSE BRIEFS

The United States Environmental Protection Agency, New England Region ("Region") requests that the Environmental Appeals Board ("Board") grant extensions of time for submitting responses to the petitions for review filed by the Town of Westborough, Town of Maynard, City of Marlborough and the Organization for the Assabet River ("OAR") (collectively, "Petitions" or "Petitioners," as the case may be) in the above-captioned matters.

GROUND

On May 26, 2005, the Region issued final National Pollutant Discharge Elimination System permits ("Final Permits") under the Clean Water Act to the Westborough Wastewater Treatment Plant Board, Town of Maynard, Town of Hudson and City of Marlborough ("Permittees"). The Final Permits authorize discharges of treated wastewater effluent to the Assabet River in Massachusetts from four publicly owned treatment works ("Assabet River POTWs") operated by the Permittees.

The Assabet River is impaired for nutrients due to point source loadings from the POTW discharges and nonpoint source loadings from phosphorus that has accumulated in the sediments. To address this nutrient impairment, the Massachusetts Department of Environmental Protection ("DEP") began in 1999 to develop a Total Maximum Daily Load ("TMDL") for phosphorus for the Assabet River. The draft TMDL was noticed for public comment in March 2004, and the final TMDL was approved by the Region in September 2005. The TMDL allocated necessary pollutants reductions to both point sources (a waste load allocation or "WLA") and nonpoint sources. The Final Permits for each POTW imposed a summer seasonal phosphorus effluent limitation of 0.1 mg/l based on the determinations and assumptions of the available WLAs in this TMDL.

The municipalities (and/or POTWs) of Westborough, Marlborough, and Maynard each timely filed petitions for review with the Board. In addition, OAR filed petitions for review of each of those Final Permits, as well as the Final Permit for the Town of Hudson. Among other things, OAR specifically challenged whether the phosphorus limits in the Final Permits were sufficient to ensure compliance with water quality standards in the absence of any requirement to ensure that the nonpoint source (i.e., sediment) phosphorus reduction contemplated by the TMDL would occur. The Board instructed the Region to file responses to all the Petitions by August 29, 2005.

On August 11, 2005, the Board issued its decision in City of Marlborough Easterly Wastewater Treatment Facility, 12 E.A.D. ___, NPDES Appeal No. 04-13, which partially remanded an NPDES permit issued to Marlborough that authorized POTW discharges of treated wastewater effluent to the Hop Brook in Massachusetts.

The Hop Brook, like the Assabet River, is impaired as a result of phosphorus from point sources and nonpoint sources. Unlike the Assabet River, however, no final TMDL yet exists for phosphorus in the Hop Brook. The Board in City of Marlborough remanded, inter alia, the summer seasonal phosphorus effluent limitation of 0.1 mg/l because the Region had not demonstrated that the limit would by itself ensure compliance with water quality standards without additional sediment remediation measures. On remand, the Region was instructed to either demonstrate that the permit as written will ensure compliance with water quality standards or, if it cannot, to modify the permit.

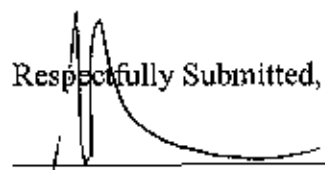
The Board's decision in City of Marlborough raises significant legal and policy considerations that the Region wants to carefully consider before responding to the Assabet River POTW Petitions. Consideration of these issues will require coordination with the national offices of EPA, as well as the Massachusetts Department of Environmental Protection. This coordination process will take beyond the August 29, 2005 filing deadline. In order to allow the process to be undertaken, the Region respectfully requests that the filing date for the Region's response be extended by 60 days to October 29, 2005.

The Region has notified each Petitioner of its intention to file a motion for extensions of time to file responses to the Petitions. The Organization for the Assabet River and the Town of Westborough have each reviewed and assented to the instant motion. The City of Marlborough has not assented to the motion. The Town of Maynard has not yet responded to messages left by the Region regarding the motion and, accordingly, has not assented to the motion.

CONCLUSION

For the reasons set forth above, the Region requests that the Environmental Appeals Board extend the deadlines for filing responses to Petitioners' petitions for review.

Respectfully Submitted,



U.S. Environmental Protection Agency
New England Region

By its Counsel,
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Of Counsel,

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Dated: August 18, 2005