NAGENO, AGENO, A

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. 08-22

NPDES Permit No. MA0100153

Lee Wastewater Treatment Facility (Lee, Massachusetts)

June 9, 2009

Dear Ms. Durr,

Enclosed please find the original of the parties' Status Report and Joint 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 counsel of record today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely

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:

Jeremia A. Pollard, Esq.

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

	4)	
In re:	Lee Wastewater Treatment Facility)	
	Lee, Massachusetts)	NPDES Appeal No. 08-22
	NPDES Permit No. MA0100153)	
)	

STATUS REPORT AND JOINT MOTION TO EXTEND STAY OF PROCEEDINGS

Region 1 ("Region") of the United States Environmental Protection Agency (the Respondent) and the Town of Lee, Massachusetts (the permittee and Petitioner) submit this status report and respectfully request that the Environmental Appeals Board ("Board") extend the stay of proceedings in the above-captioned matter until September 23, 2009, to enable the parties to continue settlement negotiations.

BACKGROUND

The Region reissued NPDES Permit No. MA0100153 ("Permit") to Petitioner on September 23, 2008. On October 27, 2008, Petitioner filed a petition for review with the Board contesting certain conditions of the Permit. By letter dated November 5, 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.

On November 26, 2008, the parties filed a Joint Motion to Stay Proceedings so that the parties could explore the possibility of settlement. On December 10, 2008, the Board issued an order staying the due date for the Region's response to the Petition until April 22, 2009. See In re Lee Wastewater Treatment Facility, NPDES Appeal No. 08-22 (EAB,

In re Lee Wastewater Treatment Facility NPDES Appeal No. 08-22

Dec. 10, 2008) (Order Granting Stay). On March 24, 2009, the parties filed a Status Report and Joint Motion to Extend Stay of Proceedings, reporting the progress in settlement discussions and requesting a further extension of the stay to July 22, 2009. On March 31, 2009, the Board granted the parties' request and extended the stay of proceedings to July 22, 2009, and ordering that any motion for a further extension "should be made in sufficient time to afford the Region an opportunity to prepare and file its response before the July 22, 2009 due date, in the event that the Board denies a further extension of the stay." *See In re Lee Wastewater Treatment Facility*, NPDES Appeal No. 08-22 (EAB, Mar. 31, 2009) (Order Granting Second Motion for a Stay).

STATUS REPORT

The parties have discussed a compliance schedule, and believe that all the issues presented in the petition for review can be resolved through an agreed-upon administrative compliance order. On May 20, 2009, the Region transmitted to Petitioner a draft administrative compliance order ("Draft Order") for Petitioner's review and comment. At present, Petitioner—which is a town organized under Massachusetts law and must make certain decisions, including whether to agree to a proposed administrative enforcement action, through a vote of its Board of Selectmen—is still reviewing the Draft Order.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The parties request that the Board further stay the proceedings by approximately two months, and extend the due date for the Region's response to the petition to September 23, 2009. During this time, the parties expect to complete negotiations on the terms of an administrative compliance order. An extension of this length is reasonable and necessary to negotiate the final terms of an administrative compliance order.

In re Lee Wastewater Treatment Facility NPDES Appeal No. 08-22

An agreed-upon administrative compliance order would resolve all issues presented in the petition for review, and, upon concluding such an agreement, Petitioner would voluntarily withdraw its petition. Therefore, both parties believe that they can settle this matter without the need for litigation before the Board.

If a stay is not granted, the parties will be forced to divert their time and effort to the proceedings before this Board, when there is a substantial likelihood that all of the issues raised in the petition for review may be resolved through settlement. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the parties jointly request that the Board grant this motion.

Respectfully submitted,

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: June 9, 2009

Jeremia A. Pollard, Esq

Hannon Lerner

184 Main St, PO Box 697

Lee, Massachusetts 01238

(413) 243-3311 Fax: 413-243-4919

Date: June 9, 2009

In re Lee Wastewater Treatment Facility NPDES Appeal No. 08-22

CERTIFICATE OF SERVICE

I	,	Randd A. Fein	, hereby certify that copies of the foregoing Status
Report a	ind .	Joint Motion to	Extend Stay of Proceedings were sent on the 9th day of June
2009 to 1	the:	following perso	ns 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 fax Copy by first class mail Jeremia A. Pollard, Esq. Hannon Lerner 184 Main St, PO Box 697 Lee, Massachusetts 01238

Fax: 413-243-4919

Signed: June <u></u>**9**, 2009