



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
FIVE POST OFFICE SQUARE – SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**VIA ELECTRONIC FILING**

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

July 14, 2011

Dear Ms. Durr,

Enclosed please find the parties' Joint Status Report and 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 served upon counsel of record today.

Sincerely,

*Ronald A. Fein*

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

cc: Peter J. Feuerbach, Esq.  
Keren Schlomy, Esq.

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

---

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

---

**JOINT STATUS REPORT AND  
MOTION TO EXTEND STAY OF PROCEEDINGS**

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), and the Barnhardt Manufacturing Company (“Barnhardt,” the permittee and petitioner), respectfully request that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter until October 28, 2011, to allow the parties to continue exploration of means to resolve this appeal without litigation before the Board.

**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.

### **STATUS REPORT**

Since April 2011, Barnhardt has continued its efforts to improve the quality of its effluent discharge to satisfy the limits in its permit regarding acute toxicity. Specifically, Barnhardt has 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 has taken 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.

### **REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The parties request that the Board extend the stay of proceedings to October 28, 2011. An extension of this length is 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.

Barnhardt needs additional time to perform additional trials involving reduced use of caustics for certain product lines. Barnhardt also needs additional time to ensure that the positive test results that it achieved in mid-May are in fact repeatable and the permit limit for acute toxicity is achievable. To that end, Barnhardt will conduct its quarterly acute toxicity test in mid-July as required in its permit, as well as voluntarily perform non-required acute toxicity testing in August and September 2011. The laboratory results from the samples taken in mid-September should be available to Barnhardt by early October. Over the summer and early fall, the parties will also discuss a modification to the Permit's flow limits to account for Barnhardt's process changes to comply with the acute toxicity limit.

By October 2011, Barnhardt will 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. The

Region agrees that Barnhardt appears to be engaged in good-faith, constructive efforts to reduce its discharge of pollutants, that its proposed schedule is reasonable, and that the parties should be able to determine, by October, whether they intend to litigate the appeal or not. The parties propose to submit a status report by October 21, 2011, advising whether the Board should dismiss the appeal, establish a revised schedule for the litigation, or take other appropriate action.

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 possibility that at least some of the issues raised in the Petition 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 request that the Board grant this motion and extend the stay of proceedings in this matter until October 28, 2011.

Respectfully submitted,

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

By its attorney,

*Ronald A. Fein*

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: July 14, 2011

**BARNHARDT MANUFACTURING COMPANY**

By its attorney,

*Ronald A. Fein* for

Peter J. Feuerbach, Esq.  
Rubin and Rudman LLP  
50 Rowes Wharf

Boston, MA 02110  
(617) 330-7136  
Fax: (617) 330-7550  
Date: July 14, 2011

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Status Report and Motion to Extend Stay of Proceedings were sent on July 14, 2011 to the following persons in the manner described below:

Posted to CDX electronic system

Eurika Durr, Clerk of the Board  
Environmental Appeals Board (MC 1103B)

Copy by e-mail

Peter J. Feuerbach, Esq.  
Keren Schlomy, Esq.

Signed: July 14, 2011

*Ronald A. Fein*  
Ronald A. Fein