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July 29, 2004

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

RE: *In re: City of Newburyport Wastewater Treatment Facility*
NPDES Permit No. MA-0101427
NPDES Appeal Nos. 04-05 and 04-06

Dear Ms. Durr:

In the above-referenced matter, please find enclosed the *City of Newburyport's Opposition to the Environmental Protection Agency's Motion to Consolidate Appeals.* Thank you for your attention to this matter.

Very truly yours,

Barry P. Fogel

BPF/cb
Enclosure

cc: City of Newburyport Sewer Commission
Tonia Bandrowicz, Senior Enforcement Counsel, EPA
M.R. Eigerman, Island Futures Group, Inc.

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

In re:	
City of Newburyport, MA Wastewater Treatment Facility	NPDES Appeal No. 04-05 NPDES Appeal No. 04-06
NPDES Permit No. MA0101427	

CITY OF NEWBURYPORT'S OPPOSITION TO THE ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO CONSOLIDATE APPEALS

On July 14, 2004, the Environmental Protection Agency ("EPA") filed a motion to consolidate the above-captioned appeals. The City of Newburyport ("City") opposes EPA's motion. As grounds for its opposition, the City states the following.

On June 3, 2004, the City filed with the Environmental Appeals Board (the "Board") a petition for review of the Final Permit issued to the City for renewal of its National Pollutant Discharge Elimination System ("NPDES") permit, NPDES Permit No. MA0101427 (the "City's Petition"). The City's Petition seeks review of certain conditions of the Final Permit and was docketed as NPDES Appeal No. 04-05.

On June 9, 2004, the Board received a petition for review of the Final Permit from M.R. Eigerman, President, on behalf of the Island Futures Group, Inc. ("IFG"), asking the Board to review certain conditions in the Final Permit ("IFG's Petition"). IFG's Petition was docketed as NPDES Appeal No. 04-06.

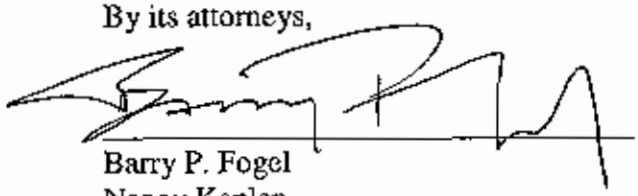
EPA seeks to consolidate these appeals on the grounds that "the two petitions involve the same NPDES permit" and that the issues in the two petitions "substantially

affect the other party." The City does not believe that these are sufficient reasons to consolidate these two petitions. The issues raised in the City's Petition and IFG's Petition differ significantly, and consolidation of these appeals will not result in economy of effort in the adjudication of these petitions. Furthermore, the City and EPA have agreed to participate actively in settlement discussions, while IFG has not taken the same approach.[1] Even if IFG were to agree to extend the deadline for EPA to respond to its petition, the City believes that consolidation of these appeals would hinder the potential for productive settlement discussions between the City and EPA regarding the City's Petition.[2]

Based upon the foregoing, the City requests that the Board deny the motion to consolidate these two proceedings.

Respectfully submitted,

CITY OF NEWBURYPORT
By its attorneys,



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I hereby certify that a true copy of the above document was served upon the attorney of record for each party by ____ on 7/29/04

Dated: July 29, 2004

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1 IFG would not assent to an extension of EPA's deadline to file its response to IFG's petition In an Order dated July 20, 2004, the Board indicated that it was awaiting a response from IFG on July 30, 2004, before ruling on EPA's motion to consolidate.

2 IFG separately has appealed several state and local permits issued to the City for the project to extend sewer and water lines to Plum Island. The City's previous efforts to engage in settlement discussions with IFG were protracted and without success. Even assuming that IFG were willing to engage in settlement discussions on their appeal of this NPDES permit, the City does not believe there is any likelihood that such discussions would be meaningful.