



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023 2004 JUL 16 PM 1:40

ENVIR. APPEALS BOARD

July 14, 2004

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Ariel Rios Building,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: City of Newburyport Wastewater Treatment Facility
NPDES Appeal No. 04-05

Dear Ms. Durr:

Enclosed please find an original and five copies of Respondent's Motion to Consolidate Proceedings and For Stay of Proceedings and an Extension of the Response Date in the above-captioned matter.

Please feel free to contact me at 617-918-1734, or by fax at 617-918-1809, if you need to discuss this filing. My e-mail address is bandrowicz.toni@epa.gov.

I will be absent from the office from July 16 through July 23, 2004 and working from an alternative work place from July 26 through July 30, 2004, where I can be reached at 781-599-3541, or through my EPA e-mail address above.

Sincerely,

Tonia Bandrowicz
Senior Enforcement Counsel

cc: Maria Eigerman
Barry P. Fogel, Esq.,

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

ENVIR. APPEALS BOARD

In the Matter of:)	
)	
City of Newburyport, Wastewater)	
Treatment Facility)	NPDES Appeal No. 04-06
)	
Permit Number: MA0101427)	
)	

**MOTION TO CONSOLIDATE PROCEEDINGS AND
FOR STAY OF PROCEEDINGS AND AN EXTENSION OF
THE RESPONSE DATE**

Region I of the Environmental Protection Agency (the "Region"), Respondent, requests that the Environmental Appeals Board ("EAB") consolidate the proceedings in connection with Island Future Group, Inc.'s ("IFG") June 9, 2004 Petition for Review ("IFG Petition") and the City of Newburyport's ("City") June 7, 2004 Petition for Review ("City Petition"). The Region also moves to extend the date for the Region to file a response in connection with IFG's Petition this case from July 30, 2004 to October 29, 2004.

On May 7, 2004, the Region issued a Final Permit to the City for renewal of its National Pollutant Discharge Elimination System ("NPDES") Permit No. MA 0101427. On June 9, 2004, the EAB received a petition for review of the Final Permit from IFG requesting the EAB to review certain conditions in the Final Permit. Two days earlier, on June 7, the EAB had received a petition for review of the Final Permit from the City to review other conditions in the Final Permit.

By joint motion filed on July 6, 2004, the Region and City sought a stay of the proceedings and an extension of time for the Region to file a response to the City's Petition. On July 7, the EAB granted the motion, extending the date for filing of the Region's response to no later than October 29, 2004.

On July 8, 2004, the City submitted a motion to intervene and grant the City all rights of a party, including specifically the right to file a response to the IFG Petition.

Counsel for the Region has contacted the City's counsel and tentatively set a date in early August to meet to discuss the issues raised by the City in its Petition. Counsel for the Region has also contacted Ms. Eigerman, President of IFG, to inquire as to whether IFG would be willing to meet to discuss a possible settlement of this matter and is awaiting a response as to possible meeting dates. Counsel for the Region also inquired as to whether IFG would be willing to file a joint motion for a stay of the proceedings but has not yet heard back from IFG and is therefore unilaterally filing this motion before being absent from the office starting on July 16, 2004, as noted below.

Given that the two petitions involve the same NPDES permit and that the issues raised in City's and IFG's petitions substantially affect the other party, the Region moves to have both petitions consolidated into one action.

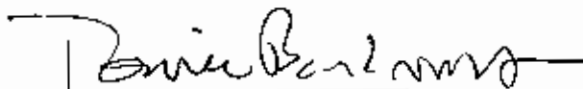
In addition, given the number of issues raised by the parties in their petitions and the fact that the City is in effect arguing for less stringent conditions in the permit while IFG is recommending more stringent requirements, the Region needs additional time to review the issues raised parties. A settlement of some or all of the issues in this appeal will simplify or resolve the issues before the Board and thus conserve the Board's resources. In order to ensure that the Region has sufficient time to review the issues raised by both parties and then to meet with the parties to discuss the possible resolution of all or part of the issues raised, the Region requests that this proceeding be stayed and that the Region be granted an extension until October 29, 2004 to file a response to IFG's petition. This would parallel the extension the EAB recently granted in the appeal proceeding filed by the City. The Region would also like to explore the possibility with the other parties of engaging in some form of alternative dispute resolution with

a third party neutral given the contradictory nature of the issues raised by each party.

Moreover, additional time is needed in order to accommodate office absences (counsel for the Region will be out of the office from July 16th through the 23rd and the EPA permit writer will be out of the office the last two weeks of August), as well as the pending Democratic National Convention the last week of July which is resulting in many employees working at home (including counsel for the Region and the permit writer).

For these reasons, the Region requests that the two petitions be consolidated and that the proceedings be stayed and the date for the Region to file a response in connection with IFG's Petition this case from July 30, 2004 to October 29, 2004.

United States EPA/Region I



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Dated: July 14, 2004

In the Matter of:
City of Newburyport Wastewater Treatment Facility
NPDES Appeal No. 04-06

CERTIFICATE OF SERVICE

I, Sally Burt, hereby certify that one original and five copies of the foregoing Joint Motion were mailed by First Class Mail on this JULY 14, 2004 to the Environmental Appeals Board 1103B, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and that a copy of the foregoing was sent by First Class Mail, postage prepaid, to the following persons:

Maria R. Eigerman, President
Islands Future Group, Inc.
P.O. Box 1392
Newburyport, MA 01950
Phone: (978) 852-7777

Barry P. Fogel, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, MA 02110-3113

Dated: 7/14/, 2004

Sally Burt