



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. 08-21  
NPDES Permit No. NH0100447  
City of Manchester, New Hampshire

June 30, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's assented-to Status Report 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 the petitioner today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein".

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: Frederick J. McNeill, P.E., City of Manchester

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

In re: City of Manchester, New Hampshire NPDES Permit No. NH0100447	)	NPDES Appeal No. 08-21
--	---	------------------------

**STATUS REPORT**

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), with the assent of the City of Manchester, New Hampshire (the permittee and Petitioner), hereby report that they have reached an agreement that will resolve this matter via an administrative compliance order, without the need for further proceedings before the Environmental Appeals Board (“Board”).

**BACKGROUND**

The Region reissued NPDES Permit No. NH0100447 (“Permit”) to Petitioner on September 25, 2008. On October 24, 2008, Petitioner filed a petition for review (“Petition”) with the Board contesting conditions of the Permit related to aluminum and sludge. On October 28, 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. Since then, the Board has three times granted the parties’ requests to stay the proceedings pending settlement discussions. *See In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, Dec. 3, 2008) (Order Granting Joint Motion to Stay Proceedings); *In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, Mar. 24, 2009) (Order Granting Motion to Extend Stay of Proceedings); *In re*

*City of Manchester, New Hampshire*, NPDES Appeal No. 08-21 (EAB, May 29, 2009)  
(Order Granting Motion to Extend Stay of Proceedings).

As noted in the Region's previous status report filed on May 19, 2009, on May 15, 2009 the Region issued a minor permit modification that corrected a clerical error in the sludge monitoring condition, and thus resolved the Petitioner's challenge to the frequency of sludge monitoring. Therefore, the only issues remaining have concerned the Permit's requirements pertaining to aluminum. As also noted in that May 19, 2009 status report, on May 18, 2009 the Region sent Petitioner, for its review, a draft administrative compliance order ("Draft Order").

In its May 29, 2009 order, the Board ordered the parties to submit a status report by July 1, 2009, regarding the status of settlement negotiations, including a discussion of whether it is appropriate to further extend the stay, dismiss the petition, or establish a schedule for the Region to file a response to the petition.

#### **STATUS UPDATE**

The parties have reached agreement on a revised draft administrative compliance order that will resolve the Petitioner's remaining challenges.

As noted above, on May 18, 2009, the Region sent Petitioner, for its review, the initial Draft Order. During the five weeks that followed, Petitioner carefully reviewed the Draft Order and provided the Region with any and all comments on that Draft Order that Petitioner wished to provide. On June 24, 2009, the Region sent Petitioner a revised draft administrative compliance order ("Revised Draft Order"). Petitioner has reviewed the Revised Draft Order and agrees that, if finalized and issued by the Region, the Revised Draft Order would resolve all of Petitioner's remaining objections to the Permit.

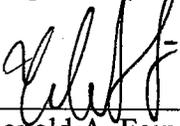
Consequently, Petitioner intends, within the next 10 days, to file with the Board, a notice of withdrawal of the Petition under its own signature. To assist Petitioner in this task, the Region has provided Petitioner with a sample form that it may use if it deems the sample helpful. Once the Petition is withdrawn and the Board has dismissed the appeal in its entirety, the Region will issue a final permit decision pursuant to 40 C.F.R. § 124.19(f)(1)(i) and then finalize and issue the Revised Draft Order as a final administrative compliance order.

**REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The Region, with the assent of Petitioner, requests that the Board extend the stay of proceedings until July 10, 2009, for the purpose of enabling Petitioner to file a notice of withdrawal of its petition for review.

Undersigned counsel represents that he has received a communication from Petitioner confirming that Petitioner assents to 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 30, 2009

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report were sent on the 30 th day of June 2009 to the following persons 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

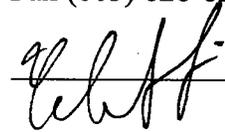
Fax (202) 233-0121

Copy by fax  
Copy by first class mail  
Copy by e-mail

Frederick J. McNeill, P.E.  
Chief Engineer  
City of Manchester, Highway Department  
Environmental Protection Division  
300 Winston Street  
Manchester, NH 03103

Fax (603) 628-6234

Signed: June 30, 2009

  
\_\_\_\_\_