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

In re:	)	
Wausau Papers of New Hampshire, Inc. Groveton, New Hampshire	)	NPDES Appeal No. 05-15

STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS

The New England Region of the Environmental Protection Agency ("Region"), after consultation with permittee-petitioner Wausau Papers of New Hampshire, Inc. ("Petitioner"), hereby submits this status report and moves to extend the stay of proceedings by an additional 120 days.

BACKGROUND

On September 20, 2005, the Region reissued a National Pollutant Discharge Elimination System Permit, No. NH0001562 ("Permit"), to Petitioner. On October 21, 2005, Petitioner filed, pursuant to 40 C.F.R. § 124.19(a), a Petition for Review ("Petition") of the Permit. On October 27, 2005, the Board directed the Region to submit a response by December 14, 2005. On November 25, 2005, the Company and the Region jointly moved to stay the proceedings until April 14, 2006 in order to allow the parties to try to resolve the issues on appeal via settlement negotiations and a permit modification. On November 28, 2005, the Board issued an order staying the proceedings in this matter until April 14, 2006, and directing the parties to submit, by

April 14, 2006, a status report advising the Board whether it is appropriate to continue the stay, dismiss the Petition, or establish a schedule for the Region to file a response to the Petition. On April 13, 2006, the Region filed an assented-to status report and requested an additional stay of proceedings until July 13, 2006, in order to attempt to resolve the issues in the Petition by permit modification. On April 18, 2006, the Region issued a Notice of Uncontested and Severable Conditions pursuant to 40 C.F.R. § 124.16(a)(2)(ii), making fully effective those conditions of the Permit not challenged in the Petition. On April 20, 2006, the Board issued an order staying the proceedings in this matter until July 13, 2006, and requiring the Region to submit, on or before that date, a status report advising the Board whether it is appropriate to continue the stay, dismiss the Petition, or establish a schedule for the Region to file a response to the Petition. On July 11, 2006, the Region filed an assented-to status report and requested an additional stay of proceedings until November 10, 2006, in order to attempt to resolve the issues in the Petition by permit modification. On July 12, 2006, the Board issued an order staying the proceedings in this matter until November 10, 2006, and requiring the Region to submit, on or before that date, a status report advising the Board whether it is appropriate to continue the stay, dismiss the Petition, or establish a schedule for the Region to file a response to the Petition.

STATUS REPORT

The Region has made substantial progress in the last four months, but requires additional time. As noted in the Region's prior status report, the Region and Petitioner had tentatively agreed on a permit modification that would resolve the issues presented in the Petition, but issues raised by state and federal wildlife agencies have required the Region to reassess its approach to two of the four issues under discussion. Those two issues have proven even more complex than the Region earlier understood.

The Region is therefore now pursuing a two-phase process for permit modification. The first permit modification will be limited in scope and will address two of the four issues presented in the Petition. The Region gave Petitioner a draft of this first permit modification on November 7, 2006, and expects to submit it for formal public comment during the week of November 13, 2006. With respect to the remaining issues, the Region requires additional time to develop a proposed second permit modification and to consult further with state and federal agencies, including, but not limited to, potential consultations pursuant to the Endangered Species Act. The Region is therefore simultaneously working on the first draft permit modification, which the Region will submit for public comment in mid-November, and a second draft permit modification, which will require substantially more time to develop.

GROUNDS FOR CONTINUANCE OF STAY

In light of the above progress, and in the interests of judicial economy and to conserve resources, the Region requests that these proceedings be stayed for an additional 120 days, in order to allow the Region sufficient time to: (1) submit the first draft permit modification for public comment; (2) receive, review, and respond to public comments; (3) issue the first permit modification; (4) develop a second draft permit modification with respect to the remaining issues, (5) consult with state and federal wildlife agencies regarding this second draft permit modification, (6) allow Petitioner an opportunity to review and comment upon the second draft permit modification; (7) make any necessary revisions; (8) propose the second draft permit modification for public comment; (9) receive, review, and respond to public comments; and (10) issue a final permit modification.

Absent a continuance of the stay, the parties will be required to divert their time and effort from an ongoing permit modification process to litigation before the Board.

REQUESTED RELIEF

Accordingly, the Region requests that the Board extend the stay of proceedings until March 9, 2007. The Region represents that its undersigned counsel has discussed this motion with Petitioner's counsel, that Petitioner's counsel has reviewed and approved this status report and motion, and that Petitioner, through counsel, concurs in this status report and assents to the motion to extend the stay of proceedings.

Respectfully submitted,

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Date: November 8, 2006