



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

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**BY HAND**

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OFFICE OF  
REGIONAL HEARING CLERK

October 10, 2008

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

Re: In the Matter of Stephen Lowe, Docket Number CWA-01-2008-0048

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon.

Thank you for your attention to this matter.

Sincerely,

  
Michael Wagner  
Senior Enforcement Counsel

Enclosure

cc: Stephen Lowe

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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GENERAL HEARING CLERK

\_\_\_\_\_  
IN THE MATTER OF )

DOCKET NO. CWA-01-2008-0048

Stephen Lowe )  
5 Warren Avenue )  
Westborough, Massachusetts )  
\_\_\_\_\_)

Status Report

After receipt of the Prehearing Order in this matter, Counsel for the Complainant unsuccessfully attempted to schedule a settlement negotiation as directed with Repondent's Counsel. Following that effort, without discussion, Counsel for Stephen Lowe ("Respondent") filed a *Notice of Withdrawal of Appearance* stating that "Respondent has made a determination that he wishes to proceed in this matter pro se and terminated the services of this office on or about October 1, 2008" and that "Respondent has directed counsel to take no further action on his behalf in this matter."

The Respondent has not filed any changes with respect to the identity of the person authorized to receive service relating to the proceeding, as required by 40 C.F.R. § 22.5(c)(4). Therefore, the Complainant does not have a telephone number for contacting Respondent. Based on past dealings, the Complainant has no reason to believe that Respondent is inclined to reach a mutual settlement. The Complainant intends, therefore, to proceed with litigation in this matter.

Issue With Regard to Forum

The Complainant filed this action as a Class I action. Subsequently, the Counsel for Complainant received and accepted an invitation to engage in alternative dispute resolution without considering whether that invitation resulted from the transfer of this matter to the Office of the Administrative Law Judges notwithstanding the filing of this matter as a Class I action. Subsequently, Chief Administrative Law Judge Susan L. Biro was assigned to be the Administrative Law Judge to preside in this proceeding.

On May 13, 2008, the Respondent filed an answer (Attachment 1) and requested a hearing pursuant to the July 23, 1999 Consolidated Rules of Practice, 40 C.F.R. Part 22 without specifically requesting a hearing under Section 554 of the Administrative Procedure Act. Forty C.F.R. § 22.51 provides that "{t}he Presiding Officer shall be a Regional Judicial Officer. The

Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.”

The Complainant would not object to the Office of Administrative Judges retaining jurisdiction of this matter now that it has been assigned to an administrative law judge. It would appear that all of the Respondent’s rights would be protected under that scenario unless the regulatory assignment of Class I matters to region judicial officers established substantive rights.

The Complainant intends to begin preparing a motion for an accelerated decision and seeks a determination on whether such a motion should be filed with the currently-assigned presiding officer or the regional judicial officer.

Respectfully submitted,



Michael Wagner  
Counsel for Complainant

**In the Matter of Stephen Lowe**  
**Docket No. CWA-01-2008-0048**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Status Report was transmitted to the following persons, in the manner specified, on the date below:

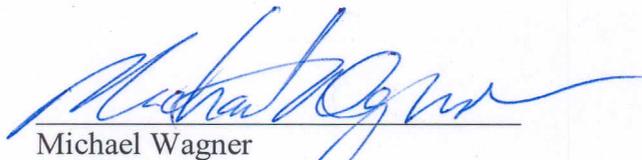
Original and one copy  
hand-delivered:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

Copy by certified mail,  
return receipt requested:

Stephen Lowe  
5 Warren Avenue  
Westborough, MA 01581

Dated: 10.10.2008



Michael Wagner  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023  
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