

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

In the Matter of)	Docket No. CWA-01-2009-0071
TOWN OF CONCORD)	Proceeding Under Section 309(g)
Town House)	of the Clean Water Act
22 Monument Square)	
Concord, Massachusetts 01742)	
Respondent.)	

**RESPONDENT'S SIXTH MOTION FOR EXTENSION OF TIME
TO ANSWER THE ADMINISTRATIVE COMPLAINT**

The Respondent Town of Concord moves to extend the time to file an Answer to the Administrative Complaint by 45 days, to April 5, 2010. As grounds for this motion, the Town states as follows:

1. On August 13, 2009, the U.S. Environmental Protection Agency ("EPA") filed an Administrative Complaint alleging that the Town had failed to comply with its National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("Permit").
2. The Complaint was served on the Town on August 24, 2009.
3. Under the Consolidated Rules of Practice, 40 C.F.R. §§ 22.1 - 22.52, the Answer was due within 30 days of receipt of the Complaint, *i.e.*, September 23, 2009.
4. On September 17, 2009, the Town moved for an extension of time to file the Answer to October 7, 2009. Kathleen Woodward, EPA enforcement counsel in this matter, assented to the motion. The Acting Regional Judicial Officer granted that extension on September 22, 2009.

5. The Town and EPA met to discuss the matter on September 21, 2009. On September 29, 2009, the Town submitted additional documents to EPA regarding activities conducted pursuant to the Permit.

6. On September 30, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to November 6, 2009. The Acting Regional Judicial Officer granted that extension on October 1, 2009.

7. The Town and EPA met again on October 15, 2009. At that meeting, the Town submitted additional documents responding to EPA's questions regarding activities conducted pursuant to the Permit. On October 19, 2009, the Town submitted a letter to EPA responding to questions raised by EPA at the October 15 meeting.

8. The Town has explained to EPA that it has been in compliance with the Permit since it received discharge authorization in March 2004; thus, the Complaint is baseless. Except to raise questions that the Town has answered, EPA has not responded to that position.

9. On November 2, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to December 7, 2009. The Acting Regional Judicial Officer granted that extension on November 3, 2009.

10. On November 25, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to January 6, 2009. The Acting Regional Judicial Officer granted that extension on December 1, 2009.

11. In a telephone conversation with Rebekah Lacey on December 17, 2009, Ms. Woodward stated that she expected to provide the Town with a response by the second week of January to its argument that the Complaint has no factual basis. Based on that time frame, she agreed to assent to a 45-day extension. On December 21, 2009, the Town filed another assented-

to motion for an extension of time to file the Answer, to February 19, 2010. The Acting Regional Judicial Officer granted that extension on December 29, 2009.

12. In response to voice mails left on January 25, 2010, and February 1, 2010, Ms. Woodward sent Rebekah Lacey an e-mail on February 5, 2010, stating that EPA was not yet prepared to provide a response, and that she would assent to another extension.

13. The Town believes that both parties would benefit from time to continue to explore resolution of this matter via informal discussions. In particular, it would be unfair to force the Town to bear the costs associated with a formal proceeding before EPA responds to the information and arguments provided by the Town.

14. This extension would not prejudice EPA, and Ms. Woodward has assented to it.

For these reasons, the Town requests a 45-day extension of time to file its Answer, to April 5, 2010.

By its attorneys,



Arthur P. Kreiger (BBO #279870)
Rebekah Lacey (BBO #673908)
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
617-621-6500

Dated: February 10, 2010

In the Matter of: Town of Concord

Docket No. CWA-01-2009-0071

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RESPONDENT'S SIXTH MOTION FOR EXTENSION OF TIME TO ANSWER THE ADMINISTRATIVE COMPLAINT in the matter of Town of Concord, CWA-01-2009-0071 were sent to the following persons in the manner indicated:

Original and one copy by hand:

Ms. Judy Lao-Ruiz
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region I
5 Post Office Square
Suite 100, Mail Code RAA
Boston, Massachusetts 02109-3912

Copy by hand and e-mail:

Kathleen E. Woodward, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region I
5 Post Office Square
Suite 100, Mail Code RAA
Boston, Massachusetts 02109-3912
Woodward.Kathleen@epa.gov

Date: February 10, 2010


Arthur Kreiger (BBO #279870)
Rebekah Lacey (BBO #673908)
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
617-621-6500

ANDERSON & KREIGER LLP

REBEKAH LACEY
rlacey@andersonkreiger.com
Direct phone: 617-621-6523
Direct fax: 617-621-6623

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February 10, 2010

RE

CLERK

By Hand

Ms. Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square
Suite 100, Mail Code RAA
Boston, Massachusetts 02109-3912

RE: *In the Matter of Town of Concord*
Docket No. CWA-01-2009-0071

Dear Ms. Lao-Ruiz:

Enclosed for filing in the above-referenced proceeding, please find the an original and one copy of the Respondent's Sixth Motion for Extension of Time To Answer the Administrative Complaint.

Thank you.

Sincerely,



Rebekah Lacey

Enc.

cc: Kathleen E. Woodward, EPA
Christopher Whelan, Town of Concord
Richard Reine, Town of Concord