

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WETLANDS COUNCIL

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Appeal of Members of Focus Tamworth

Docket No. 04-20-WtC

**STATE'S ASSENTED-TO MOTION TO WAIVE REQUIREMENT OF Env-WtC  
205.08(c)(1) REGARDING SUBMISSION OF RECORD IN REVERSE  
CHRONOLOGICAL ORDER**

NOW COMES, the State of New Hampshire, Department of Environmental Services (DES), by and through its counsel, the Office of the Attorney General, and submits this Assented-to Motion to Waive Requirement of Env-WtC 205.08(c)(1) Regarding Submission of Record in Reverse Chronological Order, and in support thereof states as follows:

1. On October 26, 2004 the Council accepted the Appeal of Members of Focus Tamworth. As such, pursuant to Env-WtC 205.08, Preparation of Department's Record, subsection (a), "unless otherwise ordered by the council, the department shall prepare the record of the decision appealed from and shall file 2 copies of the record with the council within 15 days from the date that the council accepted a petition for appeal."
2. The Council has extended the deadline for the filing of the copies of the record to November 30, 2004, in response to an Assented-to Motion filed by the State.
3. The file in question is voluminous and since its inception has been maintained by DES in chronological order (i.e., oldest documents in the front through most recent documents in the rear).

4. Env-WtC 205.08(c)(1) requires DES to submit its record to the Council “in reverse chronological order.”
5. Given the size of the file in question, it will take an excessive amount of DES staff time to put each document in reverse order. Rather, DES seeks to submit the file in chronological order and will number each page sequentially pursuant to Env-WtC 205.08(c)(2).
6. “The council, [...] upon request by a party, shall waive the application of any of these rules not mandated by statute after notice to all affected persons and a finding that good cause for the proposed waiver exists.” Env-WtC 201.04(a).
7. The requirement of submitting the record in reverse chronological order is not statutory. In the matter at hand, good cause exists to waive the requirement of Env-WtC 205.08(c)(1) concerning submission of the record in reverse chronological order. *See*, Env-WtC 201.04(c). Specifically: 1) strict adherence to the rule will cause hardship on DES as the time and financial expense of placing the voluminous records in reverse chronological order will be significant; 2) waiver of this requirement will not prejudice any of the parties to this matter, nor be detrimental to the public interest responsibilities of the council, in that counsel for the Appellant assents to this motion and the record will still be submitted in a logical and organized format; and, 3) neither neglect nor misfeasance of DES contributed to the need for this waiver request. *Id.*
8. Counsel for the Appellant, Sherilyn B. Young, Esq., assents to the relief requested herein.

WHEREFORE, the State of New Hampshire, Department of Environmental Services, respectfully requests that the Council grant this Motion and:

- A. Waive the requirements of Env-WtC 205.08(c)(1), concerning the submission of the record in reverse chronological order; and,
- B. For all other relief as is just and equitable.

Respectfully submitted,


State of New Hampshire  
Department of Environmental Services

By its attorneys,

Kelly A. Ayotte  
Attorney General

Dated: November 19, 2004

By:

  
Anthony J. Blenkinsop, Attorney  
Office of the Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
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**Certificate of Service**

I certify that a copy of the foregoing was sent this 19<sup>th</sup> day of November 2004, first class mail, postage prepaid to Sherilyn B. Young, Esq., Andrew W. Serell, Esq., Kerry D. Barnsley, Esq. and Susan Duprey, Esq.

  
Anthony J. Blenkinsop