

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

TOWN OF WOLFEBORO)	
)	
Plaintiff,)	Civil No. 1:12-cv-00130-JD
)	
v.)	
)	
WRIGHT-PIERCE,)	
)	
Defendant.)	

**AMENDED MOTION TO CONTINUE AND EXTEND DEADLINES
FOR DISCOVERY, MEDIATION AND TRIAL**

The Defendant, Wright-Pierce (“Wright-Pierce”), respectfully submits this amended motion to extend the deadlines for completion of discovery and depositions and the commencement of trial by approximately sixty (60) days, and the supplementation of the defendant’s experts’ written reports to January 6, 2014.¹ In further support, Wright-Pierce states the following:

1. The Plaintiff, Town of Wolfeboro (“Wolfeboro”), filed the Complaint in this action on April 2, 2012. The case involves complex issues concerning a wastewater treatment disposal facility (“WWTF”) constructed in Wolfeboro, New Hampshire. Wolfeboro seeks damages in excess of \$10 million.

2. On August 3, 2012, the parties submitted a proposed joint discovery plan (“Joint Discovery Plan”).

3. On August 17, 2012, the Court approved the Joint Discovery Plan, which established the following deadlines:

Discovery and Depositions completed	June 1, 2013
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Disclosure of Plaintiff’s Experts and Experts’ Written Reports	October 19, 2012
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¹ The instant motion amends the *Motion To Continue And Extend Deadlines For Discovery, Mediation And Trial* filed by the defendant on October 25, 2013.

Disclosure of Defendant's Experts and Experts' Written Reports December 19, 2012

Supplementation of Expert Disclosures February 1, 2013.

4. On December 19, 2012, Wright-Pierce served Wolfeboro with its expert witness disclosure, which included the report of Haley & Aldrich, Inc. ("H&A"). In its report, H&A opined that the WWTF site at issue in this case is usable and does not need to be abandoned as Wolfeboro alleges. According to H&A, additional field reconnaissance and explorations were needed to assess potential solutions to restore the site to its maximum potential. H&A proposed several potential slope mitigation measures which could be undertaken.

5. On May 10, 2013, the Parties filed a Joint Motion to Continue and Extend the Deadlines for Discovery, Mediation, and Trial ("Motion To Extend Deadlines").

6. On May 13, 2013, this Court entered an Order granting the Motion to Extend Deadlines, and set additional deadlines as follows:

Discovery and Depositions completed November 1, 2013

Pretrial Statements due January 16, 2014

Objections to Pretrial Statements due January 30, 2014

Final Pretrial Conference February 6, 2014

Trial February 19, 2014.

7. Since receiving the amended Joint Discovery Plan in May of this year, Wright-Pierce has been working to persuade Wolfeboro to agree to mediate the case, prior to the commencement of costly depositions. Given the complexity of the matter and the alleged damages of \$10 million, the parties anticipate conducting as many as thirty depositions (most of which cannot be completed in one day), including expert witnesses. Though Wolfeboro has not stated that it will not participate in mediation, it has not agreed to do so. As a show of good faith

to Wolfeboro that it is confident the site can be remediated and put to good use, Wright-Pierce asked its expert, H&A, to prepare a proposed slope stabilization plan, as recommended in H&A's initial report. At the expense of Wright-Pierce, H&A performed a geotechnical and hydrogeologic assessment of the site, and prepared a report, dated August 16, 2013, detailing its proposed slope stabilization plan (the "H&A Remedial Plan"). Wright-Pierce provided Wolfeboro with the H&A Remedial Plan on August 16, 2013, and after much prodding was able to convince Wolfeboro and its counsel to meet to discuss H&A's proposal. This meeting was held on August 22, 2013. Thereafter, on October 7, 2013, the parties met with the New Hampshire Department of Environmental Services ("NHDES") to discuss the permissibility of H&A's proposed remedial measure. Last week, the NHDES recommended that the H&A Remedial Plan be approved and implemented. The NHDES also raised concerns about potential wetlands issues. Wright-Pierce is now undertaking to investigate what, if any, wetlands issues must be addressed and how, which may necessitate the retention of a wetlands expert.

8. Meanwhile, the parties have completed written discovery and commenced depositions. Though Wright-Pierce was hopeful the matter could be resolved without taking costly depositions, Wolfeboro insisted on proceeding with depositions while the parties discuss the feasibility of the H&A Remedial Plan. In August, the parties agreed to dates for approximately 16 of the roughly 30 depositions that may be taken. To date, only two depositions have been completed. Several depositions have been started and were suspended in order to resume on a second day. A number of other depositions are scheduled for the coming weeks or are in the process of being scheduled for November and December by agreement of the parties. Some of the non-party depositions have had to be cancelled due to the deponents' failure to produce all of the records requested. Wright-Pierce is still awaiting documents from Woodard &

Curran, Inc. (“W&C”, the operator of the WWTF), and Weston & Sampson, Inc. (“W&S”, who performed a peer review of Wright-Pierce’s design and later designed a portion of the disposal site at issue). The subpoenaed documents are critical to the defense of Wright-Pierce and for the taking of these depositions. Although W&C and W&S produced some documents last week, W&C produced only a handful of hard-copy documents and no emails, while W&S produced emails but no other documents. Wright-Pierce has requested these missing documents from W&C and W&S, and has had to postpone these depositions until the documents are received and reviewed. Additionally, Wolfeboro subpoenaed S.W. Cole, Inc. (“SWC”, a consultant hired by Wolfeboro) to produce documents and to give deposition testimony, and these documents remain outstanding as well.

9. In light of the outstanding discovery issues and subpoena requests, it will be impossible to complete depositions by the current deadline of November 1, 2013. In addition to these reasons, defense counsel had several conflicts during the month of October which prevented them from being able to complete depositions under the current Joint Discovery Plan. Defense counsel’s law firm moved its offices and did not have access to their offices, computers or files for several days in mid-October. In November and December, Wright-Pierce’s counsel has limited availability to reschedule depositions due to involvement in the mediation of a \$188M claim in New York. Additionally, Plaintiff’s counsel is scheduled to be away on vacation the last ten days of November.

10. Once depositions have concluded, hopefully by mid-December, counsel for Wright-Pierce is hopeful that Wolfeboro will agree to schedule a mediation. If that is the case, the parties will need time to schedule and conduct the mediation.

11. For the above reasons, Wright-Pierce respectfully requests that this Court grant an

extension of the deadline for the completion of discovery and depositions as well as the defendant's supplementation of its experts' reports to **January 6, 2014**, and of the trial date to **April 7, 2014** (both extensions are approximately 60 days, give or take a few days to avoid holidays and school vacations).²

LOCAL RULE 7.2 CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Local Rule 7.2, that Wright-Pierce was notified of this request for an extension of the trial date.

LOCAL RULE 7.1(c) CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Local Rule 7.1(c), that she conferred in good faith with counsel for Wolfeboro but could not obtain its concurrence.

WHEREFORE, Wright-Pierce respectfully requests that this Court GRANT this motion and amend the Joint Discovery Plan to reflect a discovery and deposition deadline of **January 6, 2014**, a defense expert report supplementation deadline of **January 6, 2014**, and a trial date of **April 7, 2014**.

Respectfully submitted,

WRIGHT PIERCE,
By its attorneys,

/s/ Kelly Martin Malone
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Dated: October 31, 2013

² Counsel for Wolfeboro has indicated that Wolfeboro is available for trial on April 7, 2013.

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.4(b), I hereby certify that this document filed through the ECF system on October 31, 2013 will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Kelly Martin Malone

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