

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

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Date: See Signature Stamp Below

VIA ELECTRONIC FILING and E-MAIL

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**RE: City of Portsmouth, New Hampshire
NPDES Permit No. NH0109000; NPDES Appeal No. 22-02**

Dear Sirs and Madam:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency (“EPA”) is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System (“NPDES”) Permit No. No. NH0109000. EPA reissued that permit to the City of Portsmouth (“City”) on August 8, 2022.

The City timely petitioned EPA’s Environmental Appeals Board (“EAB”) for review of the permit on September 7, 2022. The City contested:

1. The rolling annual average effluent flow limit, Permit Part I.A.1
2. The daily maximum BOD & TSS Limits, Part I.A.1

3. The BOD & TSS loading limits at 1.77 mgd, Permit Part. I.A.1
4. The instream mixing/dilution analysis, permit generally
5. The general water quality standards compliance language, Permit Part I.A.2
6. The total residual chlorine limits, permit parts I.A.1

See Petition for Review at 2-3. These conditions are collectively referred to as the “Contested Conditions.”

When a permit appeal is filed, EPA must issue a notification identifying which permit conditions are stayed as a result of the appeal and which permit conditions will go into effect. See 40 C.F.R. §§ 124.16(a)(2)(i) and (ii). While a permit appeal is pending, the contested permit conditions are stayed. *Id.* at § 124.16(a)(1). Uncontested permit conditions that are “inseverable” from contested conditions are also considered to be contested and are stayed. *Id.* at §§ 124.60(b)(4), 124.16(a)(2)(i). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *Id.* at §§ 124.16(a)(2)(i) and (ii).

EPA is notifying you that the Contested Conditions are stayed pending final agency action. *Id.* at § 124.16(a)(1). As the holder of an existing, administratively-continued permit (*i.e.*, issued on August 8, 2000 and referred to as the “2000 Permit”), the City must continue to comply with conditions of that 2000 Permit that correspond to the stayed conditions. *Id.* at § 124.16(c)(2). As such:

1. The rolling annual average effluent flow limit, Permit Part I.A.1 reverts to a “Report Only” requirement for Flow from the 2000 Permit.
2. The daily maximum BOD & TSS limits, Permit Part I.A.1 revert to the identical limits in the 2000 Permit.
3. The BOD & TSS loading limits at 1.77 mgd, Permit Part. I.A.1 revert to the identical limits in the 2000 Permit.
4. The instream mixing/dilution analysis is not a permit requirement on its own and is indirectly related only to the total residual chlorine limits (*see* ¶ 6 below) and, therefore, does not impact the effectiveness of any provision.
5. The general water quality standards compliance language, Permit Part I.A.2 reverts to the identical provision in the 2000 Permit.
6. The total residual chlorine limits, Permit Part I.A.1 revert to the identical limits in the 2000 Permit.

EPA has determined that all other conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable on November 1, 2022. If you have any questions regarding this notice, please contact Michael Knapp, (617) 918-1053 or knapp.michael@epa.gov, of the Office of Regional Counsel.

Sincerely,

David W. Cash
Regional Administrator
US EPA-Region 1

cc: Stergios Spanos, NHDES
Suzanne Woodland, City of Portsmouth
Peter Rice, City of Portsmouth