

RECEIVED

PIERCE ATWOOD

2015 JUL -6 PM 1:14

ENVIR. APPEALS BOARD

**WILLIAM E. TAYLOR**

Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101

**P** 207.791.1213  
**F** 207.791.1350  
**C** 207.632.1880  
wtaylor@pierceatwood.com  
pierceatwood.com

Admitted in: MA, ME, NH

July 2, 2015

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
Washington, DC 20004

RE: Brattle Road Farm Condominium Trust  
Petition for Review of NPDES Permit No. MA0031658

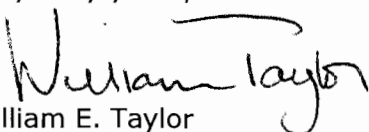
Dear Ms. Durr:

Attached please find for filing Brattle Road Farm Condominium Trust's Petition for Review of NPDES permit No. MA0031658. The permit was issued for a discharge from the Brattle Road Farm Wastewater Treatment Facility in Lincoln, MA. The Environmental Protection Agency, Region 1, issued this permit on June 2, 2015 and it was mailed on June 3, 2015. Therefore, the appeal deadline, pursuant to 40 C.F.R. § 124.20(c) and 40 C.F.R. § 124.20(d), is July 6, 2015.

The petition has been prepared in compliance with the formatting and length requirements contained in the Environmental Appeals Board's Practice Manual.

Thank you for your assistance with this filing.

Very truly yours,

  
William E. Taylor

Enclosures

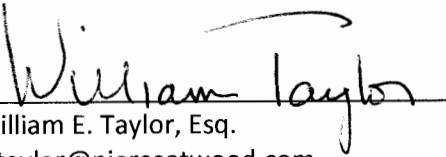
RECEIVED  
U.S. E.P.A.

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

2015 JUL -6 PM 1:14  
ENVIR. APPEALS BOARD

\_\_\_\_\_  
In re: \_\_\_\_\_ )  
Brattle Road Farm Condominium Trust \_\_\_\_\_ )  
\_\_\_\_\_  
Permit No. MA0031658 \_\_\_\_\_ )  
\_\_\_\_\_ )

PETITION FOR REVIEW OF  
BRATTLE ROAD FARM CONDOMINIUM TRUST  
NPDES PERMIT ISSUED BY REGION 1

  
William E. Taylor, Esq.  
[wtaylor@pierceatwood.com](mailto:wtaylor@pierceatwood.com)

Pierce Atwood LLP  
100 Summer Street, Suite 2250  
Boston, MA 02110  
Telephone: (207) 791-1100  
Facsimile: (207) 791-1350

July 2, 2015

*Counsel for the Petitioner*

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. STATUTORY AND FACTUAL BACKGROUND .....	2
A. Clean Water Act Overview .....	2
B. Factual Background.....	3
III. THRESHOLD PROCEDURAL REQUIREMENTS.....	4
IV. ARGUMENT.....	4
A. Standard of Review .....	5
B. EPA's Imposition of a Total Phosphorus Seasonal Effluent Limitation of 0.1 mg/l is Clearly Erroneous, Unreasonable and Unsupported by Evidence in the Record.....	5
C. EPA's Failure to Address Petitioner's Request for Additional Time in Which to Comply with New, More Stringent Water Quality-Based Permit Limits was Arbitrary and Unreasonable .....	7
V. STAY OF CONTESTED AND NON-SEVERABLE CONDITIONS.....	8
VI. CONCLUSION AND RELIEF SOUGHT .....	8
VII. TABLE OF ATTACHMENTS .....	10

## TABLE OF AUTHORITIES

### Cases

<i>Anacostia Riverkeeper, Inc. v. Jackson</i> , 798 F. Supp. 2d 210, 227-228 (D.D.C. 2011) .....	2
<i>In re Ini Road Water Pollution Control Facility</i> , 2 E.A.D. 99 (CJO 1985) .....	2
<i>Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29, 42 (U.S. 1983) .....	4
<i>American Paper Inst. v. EPA</i> , 996 F.2d 346, 352 (D.C. Cir. 1993) .....	6
<i>In Re: Teck Cominco Alaska Inc., Red Dog Mine</i> , 11 E.A.D. 457 (E.P.A. June 15, 2004) .....	7
<i>In re: Power Holdings of Illinois, Inc.</i> , 2010 WL 3258141 .....	7
<i>In re Shell Offshore, Inc. and Frontier Discoverer Drilling Unit</i> , 13 E.A.D. 357, 394-394 .....	7
<i>Alaska Ctr. For the Env’t v. Reilly</i> , 796 F. Supp. 1374, 1379 (W.D. Wash 1992) .....	7
<i>Alaska Ctr. For Env’t v. Browner</i> , 20 F.3d 981 (9 <sup>th</sup> Cir. 1994) .....	7
<i>Friends of Pinto Creek v. United States EPA</i> , 504 F.3d 1007, 1010 (9 <sup>th</sup> Cir. 2007) .....	8

### Statutes and Regulations

40 C.F.R. § 122.44(d) .....	2
40 C.F.R. § 122.44(d)(1)(V)(A) .....	2
40 C.F.R. §124.16(a) .....	8
40 C.F.R. § 124.19(a) .....	4
40 C.F.R. § 124.19(a)(2) .....	4
40 C.F.R. § 124.19(a)(3) .....	4
40 C.F.R. § 124.19(a)(4)(A) .....	1
40 C.F.R. § 124.19(a)(4)(B) .....	1
40 C.F.R. § 124.20(d) .....	4
40 C.F.R. § 124.60 (b) .....	8
40 C.F.R. § 130.3 .....	2
33 U.S.C. § 1311(b)(1)(C) .....	2
33 U.S.C. § 1313(c)(2)(A) .....	2
314 CMR 4.03(1)(b) .....	7
314 CMR 4.05(5)(c) .....	5

### Other Authorities

Division of Watershed Management, MassDEP, 2012 Integrated List of Waters .....	1
---	---

## I. INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), Brattle Road Farm Condominium Trust ("Petitioner" or "Trust"), submits this Petition for Review ("Petition") regarding its National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0031658 ("the Permit"), which was issued on June 2, 2015 by Region 1 of the United States Environmental Protection Agency ("EPA" or "the Region" or "the Agency") and the Massachusetts Department of the Environment ("MassDEP"). The Permit authorizes the Trust to discharge treated effluent from the Brattle Road Farm Wastewater Treatment Plant ("WWTP") to a headwater wetlands of the Shawsheen River ("receiving water"). The applicable receiving water segment (segment MA83-08) has been classified as impaired for fecal coliform and physical substrate habitat alterations. This receiving water segment has not been designated as impaired for nutrients or other pollutants.<sup>1</sup>

Petitioner contends that key findings of fact or conclusions of law are clearly erroneous, lack rational evidentiary support, and/or involve an abuse of discretion or implicate important policy considerations that warrant EAB review. 40 C.F.R. § 124.19(a)(4)(A) & (B). Additionally, EPA's responses to comments fail to meaningfully acknowledge or address important issues raised by the Trust and other commenters related to disputed conditions, as required by 40 C.F.R. § 124(17)(a)(2). Thus, the Trust respectfully requests that the Environmental Appeals Board ("EAB") grant review of this petition.

Specifically, the Petitioner contests and challenges the following permit limitations and conditions.

1. The monthly average total phosphorus limit of 0.1 mg/l effective between April 1 and October 31;
2. The new total cadmium limit of 0.13 ug/l which does not include a compliance schedule; and
3. The revised total lead limit of 0.86 ug/l which does not include a compliance schedule.

---

<sup>1</sup> Division of Watershed Management, MassDEP, 2012, Massachusetts Year 2012 Integrated List of Waters, Final Listing of Condition of Massachusetts' Waters Pursuant to Sections 303(d) and 305(b) of the Clean Water Act, p.175.

## II. STATUTORY AND FACTUAL BACKGROUND

The Trust submits the following relevant statutory, regulatory, and factual background to assist the Board's review:

### A. Clean Water Act Overview

Under the Clean Water Act ("CWA" or "the Act"), 33 U.S. C. §§ 1251 *et seq.*, water quality-based effluent limitations may be imposed as necessary to attain applicable water quality standards ("WQS"). See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d). WQSs include the designated uses of a waterbody and the numeric or narrative criteria adopted to protect the uses. 40 C.F.R. § 130.3; 33 U.S.C. § 1313(c)(2)(A); *Anacostia Riverkeeper, Inc. v. Jackson*, 798 F. Supp. 2d 210, 227-228 (D.D.C. 2011).

The Massachusetts Surface Water Quality Standards do not contain numeric criteria for total phosphorus. The narrative criterion for nutrients is found at 314 CMR 4.05(5)(c) which states that "[u]nless naturally occurring, all surface waters shall be free from nutrients in concentrations that would cause or contribute to impairment of existing or designated uses and shall not exceed the site specific criteria developed in a TMDL or as otherwise established by the Department pursuant to 314 CMR 4.00." EPA, as the permitting authority, is required to develop effluent limits using the narrative criteria in the absence of numeric criteria and more importantly is required to utilize state policy or regulation interpreting its narrative water quality criteria. 40 C.F.R. § 122.44(d)(1)(V)(A). The Region should ordinarily defer to MassDEP's interpretation of its own water quality standard regulations, unless that interpretation is clearly erroneous. *In re Ini Road Water Pollution Control Facility*, 2 E.A.D. 99 (CJO 1985).

The evaluation of a water bodies impairment status under narrative criteria and the specific characteristics of the receiving water is therefore critical in determining whether a discharge is causing or contributing to an exceedance under 40 C.F.R. § 122.44(d) or has reasonable potential to do so.

## **B. Factual Background**

The Trust owns the Battle Road Farm Wastewater Treatment Facility which is a 33,000 gallon per day advanced wastewater treatment plant with year round ultra violet disinfection. The current permit was issued in 2003 and expired on September 30, 2007. The permit has been administratively continued in accordance with 40 C.F.R. § 122.6. MassDEP conducted a water quality monitoring survey of the Shawsheen River in the summer of 2005. Permit Fact Sheet, page 9 of 25. Based on a memorandum summarizing the monitoring approach and the resulting data, EPA determined that the wastewater treatment plant was not causing or contributing to an impairment of bacteria limits. Nor does the operation of the wastewater treatment facility cause or contribute to impairment related to habitat modifications. With respect to total phosphorus discharges, the current permit established a monthly average total phosphorus limit of 1 mg/L and a maximum daily limit of 2 mg/L, effective year round. Metal limits for copper and lead were based on a default hardness of 40 mg/l as  $\text{CaCO}_3$ .

In November of 2014 EPA issued the draft permit which contained new, more stringent proposed phosphorus limitations, including a 0.1 mg/l monthly average limit during the growing season (April 1-October 31). An average monthly total phosphorus limit of 1.0 mg/l was established for the period of November 1-March 31. EPA based these new limits on the 1986 Quality Criteria of Water ("the Gold Book") recommended instream phosphorus concentrations for any stream not discharging directly to a lake or an impoundment. A 48-month compliance schedule was provided for the total phosphorus limitations. In the interim, a total phosphorus monthly average limit of 1.0 mg/L must be achieved.

In the draft permit, EPA also established more stringent effluent limitations for copper (5.9 ug/l for a daily maximum as opposed to a 3.87 ug/l daily maximum) and lead (0.86 ug/l versus 0.99 ug/l) based on application of a new hardness factor, and established a new monthly average limit for cadmium of 0.13 ug/l. All limits were based on the finding that there is no dilution. In summary, the draft permit

proposed new, more stringent water quality based limits for total phosphorus, copper, lead and cadmium.

### **III. THRESHOLD PROCEDURAL REQUIREMENTS**

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. §124 as follows:

1. The Petitioner has standing to petition for review because it participated in the public comment period on the permit. 40 C.F.R. §. 124.19(a)(2). See Attachment 1 – Comments of Todd Chaplin, PE, Mount Hope Engineering, Inc., on behalf of Petitioner.
2. The issues raised by Petitioner in this petition were raised during the public comment period and are therefore preserved for review including comments referenced in the Response to Comments made by MassDEP on December 22, 2014. See Attachment 2, Comments of David Ferris, Director, Wastewater Management Program, MassDEP.
3. The Trust's petition is timely filed. 40 C.F.R. § 124.19(a)(3) (30 day appeal deadline after notice of issuance) and 40 C.F.R. § 124.20(d) (adding 3 days onto mailing date).

### **IV. ARGUMENT**

#### **A. Standard of Review**

The EAB is required to grant a review when the petitioner establishes that the NPDES permit conditions in question are: 1) based on a clearly erroneous finding of fact or conclusion of law, or 2) involve an exercise of discretion on important policy considerations that the Board determines warrant review. 40 C.F.R. § 124.19(a). An agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (U.S. 1983).



**B. EPA's Imposition of a Total Phosphorus (TP) Seasonal Effluent Limit of 0.1 mg/l is Clearly Erroneous, Unreasonable and Unsupported by Evidence in the Record**

The Trust challenges EPA's imposition of a monthly average total phosphorus effluent discharge limit of 0.1 mg/l on a seasonal basis from April 1 through October 31, including EPA's decision to apply a recommended total phosphorus criterion contained in the Gold Book.

As noted, Massachusetts does not have numeric criteria for phosphorus, and instead uses a narrative criterion requiring that phosphorus contained in an effluent shall not impair a water body's designated uses. The narrative criterion references "cultural eutrophication" and "excessive growth of aquatic plants or algae" as conditions resulting from nutrient discharges. 314 CMR 4.05(5)(c). In the absence of state numeric criteria for phosphorus, EPA applied the Gold Book's recommended numeric criterion of 0.10 mg/l total phosphorus which is specifically applicable to a stream not discharging directly into lakes or impoundments.

While the Gold Book suggests a total phosphorus criteria of 0.10 mg/l may be appropriate for some streams, the Gold Book observes also that there are "waterways wherein higher concentrations or loadings of total phosphorus do not produce eutrophy". Such conditions are influenced by natural confounding factors such as "naturally occurring phenomena [which] may limit the development of plant nuisances", "natural silts or colors which reduce the penetration of sunlight needed for plant photosynthesis", "morphometric features of steep banks, great depth, and substantial flows [which] contribute to a history of no plant problems", and "nutrient[s] other than phosphorus...limiting plant growth". The Gold Book specifically indicates the need to consider such site-specific factors. The Gold Book also discusses the need to regulate phosphorus for eutrophication in some situations but specifically states that "a total phosphorus criterion to control nuisance aquatic growth is not presented." Therefore, EPA's use of the Gold Book nutrient criteria in this is plainly in error. The

phosphorus discussion ends with a reiteration that “no national criterion is presented for phosphate phosphorus for the control of eutrophication.”

EPA did not set specific stream eutrophication phosphorus criteria in the Gold Book. The Gold Book only advises that the rationale contained within the phosphate phosphorus section “should be considered” in setting a total phosphorus criterion. Developing a total phosphorus criterion requires site-specific studies and data. Neither the Agency or MassDEP has undertaken a site-specific study in this instance to demonstrate that the Petitioner’s phosphorus discharge is the cause of cultural eutrophication or excessive growth of aquatic plants or algae in the Shawsheen River.

Despite acknowledging that the 0.1 mg/l recommended total phosphorus criteria is applicable for a stream, EPA erroneously applied it in this instance to a wetland. The Fact Sheet includes the finding that the Petitioner’s discharge is to a “wetland, and during the dry months the channelized section receiving the wastewater discharge includes no natural flow.” Permit Fact Sheet, p. 9. Region 1 utilized this fact to support its finding that there was no allowable dilution, but does not acknowledge that the lack of stream flow during critical months of the year should not be taken into consideration when using a phosphorus criterion specifically designed for flowing waters. This specific point was raised and objected to by the MassDEP in its comments. MassDEP stated that “the Battle Road outfall discharges to a wetland.” The Gold Book criterion used as the basis for the phosphorus limit in the draft permit “is for any stream not discharging directly to lakes or impounds.” MassDEP recognized that EPA’s methodology would not account for any phosphorus uptake by the wetland vegetation.

MassDEP also recognized that the Petitioner’s discharge represented “an insignificant discharge of phosphorus” which could not be demonstrated to result in any impairment anywhere in the Shawsheen River basin. As a result, MassDEP could not support EPA’s proposed phosphorus limitation in this permit. Since this petition involves a Massachusetts narrative water quality standard and criteria, deference must be afforded to MassDEP not EPA. See, *American Paper Inst. V. EPA*, 996 F.2d 346, 352

(D.C. Cir. 1993) (“We do generally give substantial deference to the state’s interpretation of its own laws.”); *In Re: Teck Cominco Alaska Inc., Red Dog Mine*, 11 E.A.D. 457 (E.P.A. June 15, 2004) (citing *In re Am. Cyanamid Co.*, 4 E.A.D. 790 (1993)); see also *In re: Power Holdings of Illinois, Inc.*, 2010 WL 3258141 (holding same); and see, *In re Shell Offshore, Inc. and Frontier Discoverer Drilling Unit*, 13 E.A.D. 357, 394-394 (deferring to state’s regulatory interpretation in a “Prevention of Significant Deterioration” permit appeal). See, also *Alaska Ctr. For the Env’t v. Reilly*, 796 F. Supp. 1374, 1379 (W.D. Wash 1992) *aff’d sub nom. Alaska Ctr. For Env’t v. Browner*, 20 F.3d 981 (9<sup>th</sup> Cir. 1994) (holding that in the context of review of a state water quality standard, EPA is not entitled to *Arkansas v. Oklahoma* deference when their interpretation was not “consistently held” and “reasonable”). EPA’s development of the total phosphorus limit is diametrically opposed to MassDEP’s interpretation of its own state narrative criterion and must be considered arbitrary, erroneous and unreasonable based on the facts and law applicable to this permit.

**C. EPA’s Failure to Address Petitioner’s Request for Additional Time in Which to Comply with New, More Stringent Water Quality-Based Permit Limits was Arbitrary and Unreasonable**

Massachusetts regulations allow for establishment of compliance schedules for new, more stringent water quality-based limits. 314 CMR 4.03(1)(b). EPA has established a 48-month compliance schedule for the new, more stringent total phosphorus monthly average limitation and a 12-month compliance schedule for the new, more stringent copper limitation. However, despite a request for additional time to meet other new, more stringent metal limitations for cadmium and lead, no compliance schedules were provided. In the comments provided by Todd Chaplin of Mount Hope Engineering (Attachment 1) on behalf of the Petitioner, it was requested that “as much time as possible be allowed for implementation should the new requirements come into being.” While the request for additional time to meet new total phosphorus and copper limits was addressed, the response to comments failed to address compliance schedules for the new water quality-based cadmium limit or the new, more

stringent limits for lead. EPA's failure to address these specific requests in the Response to Comments and in the final permit are therefore arbitrary and unreasonable.

#### **V. STAY OF CONTESTED AND NON-SEVERABLE CONDITIONS**

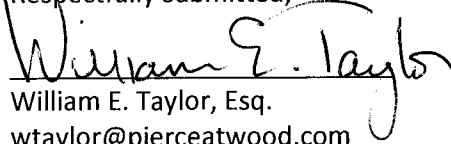
Pursuant to EPA regulations, the limits and conditions contested herein must be stayed, along with any uncontested conditions that are not severable from those contested. *See* 40 C.F.R. §§ 124.16(a) and 124.60(b). Moreover, in light of the fact that Petitioner has challenged numerous major aspects of the Permit and given the interdependent relationship of these provisions to all remaining non-contested provisions, the proper result is to stay the Permit in its entirety. *See Friends of Pinto Creek v. United States EPA*, 504 F.3d 1007, 1010 (9<sup>th</sup> Cir. 2007). In which case, and until such time as the Board reviews and resolves the contested provisions or remands the Permit to the Region for subsequent modification, the Petitioner should be directed to comply with the terms and conditions of Petitioner's former NPDES permit, *i.e.* those terms/conditions in effect prior to the June 2, 2015 permit issuance.

#### **VI. CONCLUSION AND RELIEF SOUGHT**

For the aforementioned reasons, the Petitioner respectfully seeks EAB review of the terms and conditions of the Trust's final NPDES Permit identified herein. After such review, the Petitioner requests:

- A. The opportunity to present oral argument in this proceeding and a briefing schedule for this appeal to assist the EPA in resolving the issues in dispute;
- B. A remand of the Permit to EPA Region 1 with an order to issue an amended NPDES Permit that conforms to the EAB's findings on the terms and provisions appealed by the Trust; and
- C. All other relief that the EAB deems appropriate under the circumstances.

Respectfully submitted,

  
William E. Taylor, Esq.

[wtaylor@pierceatwood.com](mailto:wtaylor@pierceatwood.com)

Pierce Atwood, LLC  
100 Summer Street, Suite 2250  
Boston, MA 02110

### **TABLE OF ATTACHMENTS**

1. Comments of Todd Chaplin, PE, Mount Hope Engineering, Inc., on behalf of Petitioner, January 6, 2015.
2. Comments of David Ferris, Director, Wastewater Management Program, MassDEP, December 22, 2014.





- ◆ Civil Engineering
- ◆ Wastewater Treatment
- ◆ Environmental Engineering
- ◆ Construction Management
- ◆ Title 5 Services/Septic Design

January 6, 2015

Michele Barden  
US Environmental Protection Agency  
Water Permits Branch, Region One  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RE: LINCOLN--Sewage Treatment—Battle Road Farm, NPDES Permit MA0031658

Dear Ms. Barden:

This office has been requested to review the draft NPDES permit recently issued for the Battle Road Farm Condominium in Lincoln, Massachusetts. We have reviewed the proposed permit in comparison with the existing permit and the ability of the existing wastewater treatment facility to achieve these permit requirements in the near and long term. We would offer the following comments with regard to the new permit requirements, the ability to meet said requirements, and the additional costs that would be associated with these requirements:

- 1) A major concern with regard to the new permit requirements is that the phosphorous limit has been reduced from 1 ppm to 0.1 ppm during the period of April to October. The current limit of 1.0 ppm remains in effect during the winter months. The current plant will not be able to meet this limit and options will need to be explored. Options may include but are not limited to the additional treatment added to the existing plant, replacement of the existing plant with a new and improved plant, new effluent disposal options, and connections to other wastewater treatment facilities. All options will result in significant capital costs and additional operational costs.
- 2) The new permit requires weekly E coli sampling. The cost is expected to be slightly higher for the actual testing and will be duplicative until fecal sampling is eliminated.
- 3) In the new permit an effluent limit has been added for cadmium. There is no mechanism for removal at this time. Due to this new requirement there would be additional costs for testing.
- 4) The new permit requires a lower limit for aluminum. There is currently no aluminum removal.
- 5) There will be additional testing costs associated with the new requirement for the reporting of zinc in the final effluent.
- 6) The new requirements note a slightly lower effluent limit for copper and lead. There is currently no copper or lead removal being completed on site. Trace metals are often a reflection of the drinking water supply serving the facility.
- 7) Whole effluent toxicity (WET) testing twice per year will add an additional cost to the operation of the facility.
- 8) A collection system map is a requirement of the new permit. We would assume this reflects a concern for inflow and infiltration in the collection system. While this information would be useful, we are not sure that daily flow variations reflect a concern during wet weather flows. There will be additional costs to perform this engineering study.

PORTSMOUTH, RI OFFICE  
Post Office Box 943  
Portsmouth, RI 02871  
Phone 401-683-1934  
Fax 401-683-1934

SWANSEA, MA OFFICE  
1788 G.A.R. Highway  
Swansea, MA 02777  
Phone 508-379-1234  
Fax 508-379-0727







Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK  
Governor

MAEVE VALLELY BARTLETT  
Secretary

DAVID W. CASH  
Commissioner

December 22, 2014

Ken Moraff, Director  
Office of Ecosystem Protection  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (OEP06-1)  
Boston, Massachusetts 02109-3912

RE: PUBLIC COMMENT

Battle Road Farm Wastewater Treatment Plant, Lincoln  
NPDES Permit No. MA0031658

Dear Mr. Moraff:

The Massachusetts Department of Environmental Protection ("MassDEP") offers the following comments for the above reference permit:

### Phosphorus

Battle Road's current permit established year-round total phosphorus limitations of 1 mg/l (monthly average) and 2 mg/l (maximum daily) with weekly monitoring. Between January 2008 and January 2014, there have been only two violations of the maximum and one violation of the monthly average. The median monthly average for this same time period is 0.45 mg/l whereas the median maximum daily is 0.70 mg/l.

The Massachusetts Surface Water Quality Standards ("MA SWQS") do not contain a numeric criterion for phosphorus: the standard is narrative and addresses nutrients in general. Specifically the MA SWQS state *Unless naturally occurring, all surface waters shall be free from nutrients in concentrations that would cause or contribute to impairment of existing or designated uses and shall not exceed the site specific criteria developed in a TMDL or as*

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

As noted in MassDEP's May 2, 2014 comments on the pre-draft which were not addressed in the draft permit, MassDEP suggests that the permittee be given twelve (12) months to meet the new limits with the existing copper limits being the interim limits. This will allow for EPA action on the site specific criterion and for the permittee to apply for a permit modification upon EPA approval of the site-specific criteria. Therefore additional costs (essentially for naught) would not have to be incurred by the permittee.

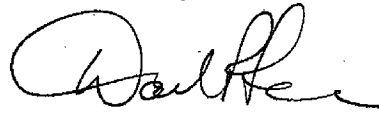
Whole Effluent Toxicity (WET) Testing

The draft permit requires that WET testing be performed in the second week of July and October. MassDEP and EPA – Region 1 have agreed to no longer specify the week of testing, only the month. This better addresses laboratory scheduling issues. MassDEP noted this edit in its May comments on the pre-draft but this edit were not incorporated into the draft as now available for public notice. MassDEP hereby requests that the requirements in Footnote 13 of the draft permit, both in the text of the paragraph and in the table, be modified to remove the requirement for testing during the second week of the respective months.

MassDEP appreciates the opportunity to comment further on the draft NPDES permit for Battle Road Farm.

If you have any questions or require any further information or clarification, I can be contacted at (617) 654-6514.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Ferris", written over a horizontal line.

David R. Ferris, Director  
Wastewater Management Program  
Bureau of Resource Protection

cc: Kevin Brander, MassDEP/BRP/NERO (via e-mail)

From: (207) 791-1326  
Ashley Hadam  
Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101

Origin ID: SFMA



Ship Date: 02JUL15  
Act/Wgt: 0.5 LB  
CAD: 1367078/INET3610

Delivery Address Bar Code



Ref # 33189/1316 - Brattle Farm Road  
Invoice #  
PO #  
Dept #

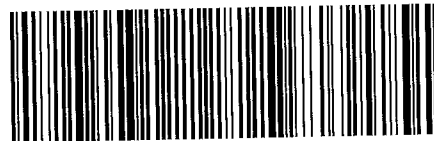
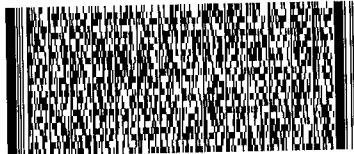
SHIP TO: (202) 233-0122  
BILL SENDER  
Clerk of the Board  
U.S. EPA/EAB  
1201 Constituion Avenue, NW  
WJC East Building, Room 3334  
WASHINGTON, DC 20004

FRI - 03 JUL AA  
STANDARD OVERNIGHT

TRK# 7739 7468 2008  
0201

20004  
DC-US  
IAD

**XC RDVA**



537.031A15EE4B

Brattle Road Farm

MA0031658

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.