

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

In Re:)
)
)
Springfield Water and Sewer Commission,)
Springfield Regional Wastewater Treatment)
Facility)
)
Reissuance of NPDES Permit No.)
MA0101613)
)

**PETITION FOR REVIEW OF THE
SPRINGFIELD WATER AND SEWER COMMISSION'S NPDES PERMIT**

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I. INTRODUCTION

This Petition requests review of National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0101613 (“Final Permit”) issued to the Springfield Water and Sewer Commission (the “Commission” or “SWSC”) for its Springfield Regional Wastewater Treatment Facility (“SRWTF”) and 23 Combined Sewer Overflow (“CSO”) Outfalls by the U.S. Environmental Protection Agency (“EPA”) Region 1 (the “Region”). The Commission petitions this Board for review of certain provisions, including but not limited to nitrogen limits, bypass outfall classification as a CSO, co-permittee requirements, public notification plan requirements, and bypass conditions. The Region’s inclusion of the following disputed provisions in the Final Permit is based on clearly erroneous findings of fact and conclusions of law. Accordingly, the Commission requests that the Board remand the Final Permit for revisions consistent with the applicable facts and law.

II. PERMIT CONDITIONS FOR REVIEW

Pursuant to 40 C.F.R. § 124.19(a), the Commission petitions for review of NPDES Permit No. MA0101613, issued by the Region on September 30, 2020 and received by the Commission on October 1, 2020. *See* Final Permit, attached as Exhibit 1. The Commission contends that the following permit conditions are based on clearly erroneous findings of fact and conclusions of law:

- 1) Part I.A.1 (Final Permit, p. 4) regarding the total nitrogen limit.
- 2) Part I.H.1.a (Final Permit, p. 22) regarding nitrogen optimization requirements.
- 3) Parts I.C-E (Final Permit, pp. 1, 16-19) regarding co-permittees.
- 4) Part I.A.1, fn.3 (Final Permit, p.5) regarding bypass of secondary treatment.
- 5) Cover Page (Final Permit, p. 1); Part B.1 (Final Permit, p. 10); Part B.4 Final Permit, p. 15); Part H.4 (Final Permit, pp. 23–24) regarding the reclassification of Outfall 042.
- 6) Part I.B.3.g (Final Permit, pp. 13-14) regarding public notification plan.

- 7) Part I.B.3.c (Final Permit, p. 12) regarding the prohibition of septage to the combined collection system during wet weather.
- 8) Part I.B.3.e (Final Permit, p. 13) regarding the Nine Minimum Control (“NMC”) requirements.
- 9) Part I.A.1.e, (Final Permit, p. 9); Part I.B.3.d (Final Permit, p. 13); Part I.H.3.a (Final Permit, p. 24) regarding the definition of “dry weather.”
- 10) Part I.D (Final Permit, pp. 16–18) regarding operation and maintenance requirements.
- 11) Part I.D.4 (Final Permit, p. 17) regarding collection system mapping.
- 12) Part I.D.5.a–b (Final Permit, pp. 17–18) regarding operation and maintenance plan.
- 13) Part I.G.1 (Final Permit, p. 21) regarding pretreatment requirements.
- 14) Part I.A1, fn.7 (Final Permit, p. 6); Part I.H.2.a (Final Permit, p. 23) regarding *E.coli* limits.
- 15) Part I.A.1 (Final Permit, p. 3); Part I.A.1, fn.9 (Final Permit, p. 7); Part I.H.3 (Final Permit, p. 23) regarding phosphorus monitoring requirements.

III. FACTUAL AND STATUTORY BACKGROUND

A. The Treatment Facility and Combined Sewer System

The Commission owns and operates both the SRWTF and the combined sewer collection system within the City of Springfield, which includes 23 CSO outfalls. The SRWTF processes approximately 40 million gallons per day (“MGD”), and the SRWTF and CSO outfalls discharge to the Connecticut River, which ultimately flows into Long Island Sound. The Commission also operates and maintains 33 pumping stations and 475 miles of collection system piping. In addition to the Commission, the Final Permit also was issued to six co-permittees: the towns of Agawam, East Longmeadow, Longmeadow, Ludlow, West Springfield, and Wilbraham, all of which contribute flows for treatment at the SRWTF.

B. History of the Long Island Sound Total Maximum Daily Load (the “LIS TMDL”)

Section 303(d) of the Clean Water Act (“CWA” or the “Act”) requires states to develop a TMDL for waterbodies containing water quality impairments. *See* 33 U.S.C. § 1313(d), (e). A TMDL first estimates the assimilative capacity of the waterbody relative to a particular pollutant, based on the applicable water quality standard. A TMDL then allocates that assimilative capacity among point sources as wasteload allocations (“WLAs”) and nonpoint sources as load allocations, taking into account natural background levels and a margin of safety. *See* 40 C.F.R. § 130.7. Permitting authorities then use the TMDL WLA as the basis for permit limits applicable to each permitted point source. All such permit limits must be consistent with the WLAs established in the TMDL for each point source or group of point sources. *See id.*, 40 C.F.R. §122.44(d)(1)(vii)(B).

Nitrogen is not the cause of any impairment identified in the Connecticut River. EPA has stated that the basis for the imposition of a total nitrogen limit in the Final permit is the TMDL developed to address nitrogen impairments in Long Island Sound, downstream of the Connecticut River. *See* Revised Draft Permit, at Fact Sheet pp. 18-19, attached as Exhibit 2. Specifically, EPA stated that nitrogen-driven eutrophication impacts in Long Island Sound require nitrogen reductions at the SRWTF. *Id.*

The LIS TMDL establishes group WLAs for contributing point sources both inside and outside the immediate Long Island Sound basin. The LIS TMDL determined that Connecticut River sources were contributing baseline loadings of 21,672 lbs/day of total nitrogen, and established a group WLA of 16,254 lbs/day, requiring Connecticut River dischargers to reduce total nitrogen loadings by 25 percent. Ex. 4, at p. 29; Ex. 6, at pp. 19–20. The SRWTF share of that WLA is 5,429 lbs/day. Ex. 4, at p. 31; Ex. 6, at pp. 19–20.

As early as 2004–2005, total nitrogen loadings from point sources to the Connecticut River were reduced to only 12,836 lbs/day, well below the WLA target established by the LIS TMDL. Ex. 4, at p. 30. As a result, the reductions prescribed by the LIS TMDL already have been satisfied. EPA has presented no evidence to suggest that the LIS TMDL targets for the Connecticut River are no longer being met. Consistent with the LIS TMDL, no further reductions from Connecticut River point sources are necessary.

C. Draft Permits and Commission Comments

On November 15, 2017, EPA issued a Draft Permit for the SRWTF, attached as Exhibit 3. On February 9, 2018, the Commission submitted comments to EPA and the Massachusetts Department of Environmental Protection (“MassDEP”), attached as Exhibit 4. On April 27, 2018, after a public hearing, the Commission submitted supplemental comments, attached as Exhibit 5. On August 17, 2018, EPA issued a Revised Draft Permit. On October 15, 2018, the Commission submitted comments on the Revised Draft Permit, attached as Exhibit 6.

D. Issuance of Final Permit

On September 30, 2020, EPA issued the Final Permit for the SRWTF, along with its Response to Comments, attached as Exhibit 7. EPA served notice of the Final Permit via email to the Commission on October 1, 2020. In its comments on the Draft Permit and Revised Draft Permit, the Commission raised objections to each of the conditions challenged in this Petition, with the exception of issues that were not reasonably ascertainable during the public comment periods because EPA raised the issues for the first time in the Final Permit or in its Response to Comments.

IV. THRESHOLD PROCEDURAL REQUIREMENTS

The Commission satisfies the threshold requirements for filing this petition under 40 C.F.R. part 124:

1. The Commission is the Permittee and has standing to petition for review of the Final Permit because it participated in the comment period. *See* 40 C.F.R. § 124.19(a)(2); Ex. 4-5, 7.

2. The issues raised in this petition were raised during the comment period and therefore were preserved for review, with the exception of issues that were not reasonably ascertainable during the public comment periods because EPA raised them for the first time in the Final Permit or Response to Comments. *See id.*; 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii).

3. The Commission filed this petition within 30 days after the Regional Administrator served notice of issuance of the Final Permit. *See* 40 C.F.R. § 124.19(a)(3). The Commission was served notice of the Final Permit on October 1, 2020, and the deadline for filing this petition is November 2, 2020.

The Commission is concurrently petitioning the MassDEP Office of Appeals and Dispute Resolution for review of the Final Permit.

V. STANDARD OF REVIEW

The Board may grant review of a permit decision when the petitioner shows that the decision was “based on a finding of fact or conclusion of law that is clearly erroneous.” 40 C.F.R. § 124.19(a)(4)(i). When evaluating a challenged permit decision for clear error, the Board examines the administrative record that serves as the basis for the permit to determine whether the permit issuer exercised “considered judgment.” *In re Steel Dynamics, Inc.* 8 E.A.D. 165, 191, 224-25 (EAB 2000); *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 417-18 (EAB 1997). The permit issuer must articulate with reasonable clarity the reasons supporting its conclusions and the significance of the crucial facts it relied on when reaching its conclusions. *In re Ash Grove*, 7 E.A.D. at 417. As a whole, the record must demonstrate that the permit issuer “duly considered the issues raised in the comments” and followed an approach that “is rational in light of all

information in the record.” *In re Gov’t of D.C. Mun. Separate Storm Sewer Sys.*, 10 E.A.D. 323, 342 (EAB 2002).

With respect to technical issues, the Board adopts the same standard. As a result, the Board “takes a careful look at technical issues and will not hesitate to order a remand when a Region’s decision on a technical issue is illogical or inadequately supported by the record.” *In re NE Hub Partners, LP*, 7 E.A.D. 561, 568 (EAB 1998).

As a whole, the record must demonstrate that the permit issuer “duly considered the issues raised in the comments” and ultimately adopted an approach that “is rational in light of all information in the record.” *In re Gov’t of D.C. Mun. Separate Storm Sewer Sys.*, 10 E.A.D. 323, 342 (EAB 2002); *accord In re City of Moscow*, 10 E.A.D. 135, 142 (EAB 2001); *In re NE Hub Partners, LP*, 7 E.A.D. 561, 567-68 (EAB 1998), *review denied sub nom. Penn Fuel Gas, Inc. v. EPA*, 185 F.3d 862 (3d Cir. 1999); *In re Teck Cominco Ala Inc., Red Dog Mine*, 11 E.A.D. 457, 473 (EAB 2004).

VI. ARGUMENT

A. EPA clearly erred by imposing a total nitrogen limit based on a “new approach” that bears no rational relation to the WLA established in the LIS TMDL (Part I.A.1, at p. 4).

After proposing a benchmark approach and then an annual average limit based on a concentration target of 8 milligrams per liter (“mg/L”) total nitrogen for the SRWTF discharge in the Draft Permit and Revised Draft Permit, EPA adopted an entirely “new approach” to impose an annual average total nitrogen limit of 2,794 lbs/day based on a reduced concentration target of 5 mg/L in the Final Permit. *See Ex. 7*, at pp. 13–15 (describing a “new approach” to out-of-basin permitting). Because EPA announced that this new approach and the resulting limit would apply to the SRWTF for the first time in the Final Permit and EPA’s Response to Comments, the Commission was denied any meaningful opportunity to review and provide comments on the total

nitrogen limit or EPA's supporting rationale in violation of 40 C.F.R. § 124.10. Additionally, because these issues were not reasonably ascertainable during the public comment periods, the Petitioner has a duty to present its arguments on the issues in this Petition. *See* 40 C.F.R. § 124.13; 40 C.F.R. §§ 124.19(a)(4)(ii); *see also In re: Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No. 00-15, slip.op. at 6 (EAB April 4, 2001). (explaining that “there is nothing in the regulations that constrains a petitioner’s ability to raise issues that were not reasonably ascertainable during the comment period,” and, in fact, if a petitioner believes that EPA’s response to comments “relied on mistaken facts or raised issues not reasonably ascertainable during the public comment period which warrant remand for purposes of allowing for additional public comment, [the petitioner] not only ha[s] the opportunity, but the duty, to present its argument in this regard in its Petition”).

EPA committed clear error in failing to provide opportunity for comments, and, moreover, the new approach itself is clearly erroneous. Contrary to EPA’s assumptions, the total nitrogen limit cannot be achieved without substantial investment by the Commission, and without increases for taking on flows from other communities, for CSO reductions, and for future growth. Further, EPA’s imposition of a total nitrogen limit based on a concentration target of 5 mg/L for SRWTF is entirely arbitrary, did not follow the regulatory process required for establishing water quality-based effluent limits (“WQBELs”), and bears no rational relation to the WLA established in the LIS TMDL. EPA’s imposition of the total nitrogen limit is clearly erroneous. The Final Permit should be remanded with instructions to remove the total nitrogen limit.

1. EPA failed to provide notice and an opportunity to review and comment on its “new approach” and the resulting total nitrogen limit.

Federal regulations require that the public (including affected permittees) be provided with notice and an opportunity to comment on proposed permit terms. *See* 40 C.F.R. § 124.10. Because

the total nitrogen limit imposed in the Final Permit, and EPA's rationale for imposing it, arose for the first time in the Final Permit and supporting documents, the issue was not reasonably ascertainable during the public comment period, and the Commission was denied notice and a meaningful opportunity to review and comment on that limit and EPA's rationale. *See id.*; *see also* 40 C.F.R. § 124.13; 40 C.F.R. §§ 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6. EPA's failure to provide notice and opportunity to comment violates federal law, is clearly erroneous and warrants remand of the Final Permit. *See* 40 C.F.R. § 124.19; *see also* 85 Fed. Reg. 51650, 51651 (August 21, 2020).

In the Draft Permit, EPA proposed a loading benchmark of 2,279 lbs/day for total nitrogen, rather than a limit. Ex. 3, at Fact Sheet pp. 19-21. This benchmark was derived by averaging the total nitrogen load discharged from the facility from 2012 to 2016. *Id.* The Draft Permit Fact Sheet also provided two alternatives: 1) a 2,534 lbs/day loading benchmark based on an 8 mg/L concentration and 2) no loading benchmark with a 8 mg/L concentration benchmark. *Id.* The 2,279 lbs/day benchmark and both alternatives were "intended to be an indication of successful optimization rather than an enforceable limit." Ex. 2, at Fact Sheet p. 3. The Commission submitted comments in support of the second alternative and disagreed with EPA's methodology for calculating or imposing any loading benchmark, which would be based on a nitrogen reduction greater than that required to satisfy the LIS TMDL, which was designed to meet applicable downstream water quality standards. Ex. 4, at pp. 28-36.

In the Revised Draft Permit, EPA failed to select either of the benchmark alternatives proposed in the Draft Permit and instead incorporated an enforceable annual average total nitrogen limit of 2,354 lbs/day, which EPA stated was necessary to meet the TMDL target of a 25% reduction in total nitrogen loadings from baseline point source loadings to the Connecticut River.

Ex. 2, at Fact Sheet pp. 3–4. EPA stated that the 2,534 lbs/day value was the “maximum annual average [total nitrogen] load discharged from the facility from 2012-2016.” *Id.* The Commission commented that it might be able to accept an optimization benchmark (rather than a limit) based on 8 mg/L, but strongly objected to establishment of a limit that again required reductions greater than that required to satisfy the LIS TMDL, and that could not easily be met by the facility. *See* Ex. 6, at pp. 12-18.

In June 2019, EPA conducted public information sessions to announce a “new approach.” For implementing the Long Island Sound TMDL in NPDES permits for Massachusetts facilities discharging to waterbodies in the Long Island Sound watershed. EPA made clear, however, that Springfield would not be subject to this new approach and would receive the same limit announced in the Revised Draft Permit. *See* “Long Island Sound 2001 TMDL Implementation – Summary of Massachusetts Total Nitrogen Annual Average Loading Limits,” EPA Region 1 (June 7, 2019), attached as Exhibit 8.

In the Final Permit, EPA abandoned its prior approach and instead, for the first time, determined that the SRWTF must meet a new limit, based not on the proposed target concentration of 8 mg/L, but instead on a reduced target of 5 mg/L, chosen due to the SRWTF’s size. *See* Ex. 7, at p. 12. Finally, EPA’s “new approach” calculated the limit based on 5 mg/L times the SRWTF’s design flow, and for the first time removed all previous allowances for increased total nitrogen discharges for taking on flows from other communities, for CSO reductions, and for future growth.

Because the Commission received notice of the new limit, the target concentration of 5 mg/L, the removal of all future increased nitrogen allowances, and the application of EPA’s “new approach” to the SRWTF for the first time on October 1, 2020 when it received the Final Permit, EPA failed to provide proper notice and a meaningful opportunity for review and comment on

these critical provisions and their underlying rationale in violation of 40 C.F.R. § 124.10. These issues were not reasonably ascertainable during the public comment periods because they were raised for the first time in the Final Permit and Response to Comments, and the Petitioner has a duty to present its arguments in this Petition. *See* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6.

In addition, because EPA's new approach is not based on the WLA established for Connecticut River dischargers in the LIS TMDL, EPA has deprived the Commission of a meaningful opportunity to comment on the overarching strategy to attain water quality standards goals in Long Island Sound, including the economic impacts of those goals. EPA asserted that providing ample opportunity to comment on the Draft Permit and Revised Draft Permit should be sufficient. *See* Ex 7, at p. 136. However, neither the Draft Permit nor the Revised Draft Permit applied EPA's admittedly "new approach" to the SRWTF, imposed a total nitrogen limit based on design flow and a concentration target of 5 mg/L, or eliminated the incremental loading increases previously allowed for future activities. EPA's failure violates federal law and is clearly erroneous. As a result, the Commission requests that the Final Permit be remanded.

2. EPA's basis for imposing an annual average total nitrogen limit of 2,974 lbs/day using a target concentration of 5 mg/L is arbitrary and clearly erroneous.

EPA used its "new approach" to assign target concentrations of either 5, 8, or 10 mg/L to facilities, ostensibly based on discharge volume. Ex. 7, at pp. 9–13. EPA did so arbitrarily, however, and not in a way demonstrated to be necessary to achieve water quality standards in the receiving stream or downstream segments (or to meet the WLA established in the LIS TMDL). EPA also assumed that the SRWTF could meet a limit based on a target concentration of 5 mg/L. *Id.* at p. 12. That assumption, however, is clearly erroneous. Because EPA's new approach arose

for the first time in the Final Permit and supporting documents and was not reasonably ascertainable during the public comment period, the Commission is allowed, and indeed has a duty, to present new information to demonstrate clear error in this Petition. *See* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6.

a. EPA arbitrarily assigned total nitrogen concentration targets to the SRWTF and other facilities.

EPA's new approach arbitrarily divides facilities into categories based on design flow. Specifically, EPA asserts that it has established mass-based effluent limits using facility design flow and target concentrations of 5, 8, and 10 mg/L, which EPA alleges can be easily met by means of optimization or, for the four largest facilities (including the SRWTF), readily available treatment technology. Ex. 7, at pp. 9–13. Because the SRWTF has a design flow greater than 10 MGD, EPA asserts that it should be required to meet a total nitrogen limit based on a target concentration of 5 mg/L. *Id.* EPA states that this approach was derived in order to balance the burden of treatment across facilities. *Id.* EPA does not provide any basis, however, for how it selected the target concentrations of 5, 8, and 10 mg/L, how it selected the facility design flows that would determine which target concentration would apply, or why those particular target concentrations or the resulting limits are necessary to achieve applicable water quality standards or the WLA established in the LIS TMDL.

Although EPA asserts that its target concentrations are based on the size of a facility, both the concentrations themselves and EPA's assignment of those concentration targets to specific facilities appear to be arbitrary. Even within the framework of EPA's new approach, EPA is arbitrarily implementing the target concentrations for some facilities. For example, the facility operated by the City of Keene, NH has a design flow of 6 MGD, which under EPA's approach should result in a target concentration of 8 mg/L. However, EPA has instead assigned Keene a

target concentration of 10 mg/L. *See* 2020 Draft Permit (No. NH0100790) Issued to the City of Keene, New Hampshire, at Fact Sheet p. 27, attached as Exhibit 9. Notably, the City of Keene discharges into another tributary to Long Island Sound, and EPA issued Keene's permit directly, as it did with the Commission's permit. EPA's arbitrary and disparate treatment of similarly situated facilities constitutes clear error and warrants remand of the Final Permit.

b. EPA clearly erred in assuming that the SRWTF could meet the new total nitrogen limit without substantial investment by the Commission.

EPA appears to base the new total nitrogen limit, in part, on the SRWTF's ability to meet that limit. Ex. 7, at pp. 9–13. This assumption is clearly erroneous, because SRWTF will be unable to consistently meet the total nitrogen limit of 2,794 lbs/day, based on a target concentration of 5 mg/L, so will be in violation of the Final Permit. As above, because this limit first appeared in the Final Permit, the Commission is allowed to present new information to demonstrate clear error. *See id.*; *see also* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6.

A statistical calculation of historical flows and recent process optimization efforts, attached as Exhibit 10, demonstrates that the SRWTF's is likely to violate the total nitrogen limit of 2,794 lbs/day. For each month, there is a 12 percent chance that the SRWTF will exceed the 2,794 lbs/day loading limit. This noncompliance risk correlates to 1–2 monthly violations of the total nitrogen limit per year over the five-year permit term. This demonstrates that EPA's assumption that the facility can meet the new limit is clearly erroneous.

Additional risk will arise with anticipated increases of influent flow to the SRWTF after completion of CSO long-term control projects, such as the York Street Pump Station and River Cross projects, which will significantly increase conveyance capacity to the SRWTF, from 34 MGD to 64 MGD. *See* Ex. 6, at pp. 27–31. Considering those projects, an even higher risk of

noncompliance is expected. Based on the Commission's analysis, the SRWTF cannot and will not consistently meet the total nitrogen limit imposed in the Final Permit. As a result, upgrades for a more advanced nitrogen removal process (well beyond the treatment technology assumed by EPA) would be required to meet the new limit.

Further, based on the Commission's previous demonstration that it could not easily meet a limit based on a total nitrogen target concentration of 8 mg/L, it is not rational for EPA to assume that it can easily meet a limit based on a lower target concentration of 5 mg/L. As the Commission has commented, utilization of an effluent concentration benchmark, rather than a mass-based limit, is a technically sound approach to process performance evaluation and optimization, consistent with industry standards. Ex. 4, at pp. 35–36; Ex. 6, at pp. 18–26. Numerous well-established references and practices suggest that 8 mg/L total nitrogen is an appropriate effluent benchmark for the typical performance of biological nutrient removal (“BNR”) systems employing the Ludzack-Ettinger (“LE”) process configuration, similar to the BNR process employed at the SRWTF. With an 8 mg/L total nitrogen optimization benchmark, plants utilizing the LE process would still require optimization to adjust operational parameters or potential modifications to operate in a different process mode, because of the physical limitations imposed by its configuration.

In the past 10 or so years, the Commission has been working closely with its contract operation partner to continuously optimize the SRWTF's BNR process performance, and has made significant progress in improving process performance reliability, working toward achievement of an optimization benchmark of 8 mg/L. A reliability analysis of effluent total nitrogen concentrations, attached as Exhibit 11, was conducted to evaluate the SRWTF's ability to reliably achieve different performance benchmarks. The results, based on the most recent 10 years of

effluent total nitrogen data, suggest that the SRWTF has achieved only 92 percent reliability with an effluent total nitrogen benchmark of 8 mg/L, which is also the practical limitation of the current LE process currently used by the SRWTF. In other words, the BNR process used by the SRWTF cannot generally meet performance benchmarks less than 8 mg/L total nitrogen. In fact, the SRWTF's performance reliability is only 7 percent with an optimization benchmark of 5 mg/L. Further, completion of the York Street Pump Station CSO project will significantly alter the plant flow regimes, resulting in reduced performance reliability. *See* Ex. 6, at pp. 27–31. Thus, EPA's assumptions concerning the SRWTF's ability to reliably meet a total nitrogen limit based on a target concentration of 5 mg/L are clearly erroneous.

3. EPA clearly erred in removing allowances for increased total nitrogen loadings for future activities.

The Revised Draft Permit included a provision allowing incremental increases in total nitrogen discharges to allow the SRWTF to take in loadings from other plants, to increase flow to the plant for CSO reductions, and to allow for future growth. Ex. 2, at p. 6, fn.9. EPA asserts that such allowances are no longer necessary, because the SRWTF design flow is now being used to calculate the new total nitrogen limit. Ex. 7, at p. 145. That assertion, however, is clearly erroneous. A mass-based limit established using design flow does not account for such future activities, which would increase flows to the plant beyond the current design flows, and likely would contribute to additional violations of the Final Permit. As above, because this limit first appeared in the Final Permit, the Commission is allowed to present new information to demonstrate clear error. *See id.*; *see also* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6.

For example, flows will increase after completion of CSO long-term control projects, such as the York Street Pump Station and River Crossing projects, which will significantly increase

conveyance capacity to the SRWTF, from 34 MGD to 64 MGD. *See* Ex. 6, at pp. 27–31. In addition, incoming total nitrogen loading could increase substantially in the future due to population or industrial growth. Ex. 6, at p. 26.

Finally, incremental increases in loading would be necessary to account for total nitrogen WLAs assigned to other communities as flows from underperforming facilities are brought to the SRWTF for treatment. EPA has acknowledged that the Commission is currently exploring the possibility of consolidating wastewater flows from other facilities throughout the Springfield area, and diverting them for treatment at the SRWTF. Ex. 6, at pp. 26–27. Affording the Commission the opportunity to explore this possibility could achieve significantly greater reductions in nitrogen loadings to the Connecticut River. *Id.* Notably, other facilities in the Springfield area do not have the capacity or technology to achieve advanced nitrogen removal that the SRWTF is designed for and currently achieves. *Id.* In that regard, any diverted flows will receive a much higher level of nitrogen removal at the SRWTF than they currently receive at surrounding facilities. *Id.* The overall reduction in nitrogen loadings from the closure of less technologically-advanced facilities in the Springfield area, would far outweigh any incremental increase of total nitrogen loads to the larger and more technologically-advanced SRWTF. *Id.* Allowing additional total nitrogen loads allocated to the consolidated facilities to be transferred to SRWTF will better incentivize SRWTF to explore these possibilities, which would result in considerable overall load reductions within the watershed. *Id.* This approach is consistent with the objectives of the LIS TMDL, because there would not be a net decrease in the total nitrogen load being discharged to the Connecticut River.

EPA responded that in order for a facility to divert some or all of its flow to the SRWTF for treatment, the Commission must submit a request for a permit modification, in which case EPA will evaluate all relevant information available at the time the request is made (i.e., consideration of

facility data, etc.) and make a determination based on this evaluation. Ex. 7, at p. 147. EPA asserts that this will leave the Commission in the same position as under their proposed structure, which is clearly erroneous. Requiring a permit modification—as opposed to having a streamlined process incorporated directly into the Final Permit that allows incremental increases due to consolidation of other facilities—is a significantly longer, more involved, more expensive, and more onerous process. Requiring permit modification will discourage smaller facilities from consolidation and eliminate opportunities for environmentally-beneficial overall reductions in nitrogen loadings.

EPA clearly erred in removing the provisions allowing incremental increases in total nitrogen loading to account for future activities. As a result, the Final Permit should be remanded with instructions to include the incremental increases in total nitrogen loadings for future activities that increase flow to the SRWTF.

4. EPA clearly erred by violating applicable regulatory procedures for establishing WQBELs for total nitrogen.

EPA has established clear regulatory procedures for establishing WQBELs in NPDES permits, based on applicable water quality standards and WLAs, such as those established for Connecticut River dischargers in the LIS TMDL. EPA’s new approach, however, abandons those procedures in favor of arbitrary assignment of total nitrogen concentration targets and limits, as described above. EPA’s failure to follow established procedures in imposing a total nitrogen limit on the SRWTF constitutes clear error and violates federal law. As above, because this limit first appeared in the Final Permit, the Commission is allowed to present new information to demonstrate clear error. *See id.*; *see also* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *Town of Ashland*, slip.op. at 6.

Federal regulations, as well as EPA’s NPDES Permit Writers’ Manual (2010) and Water Quality Standards Handbook (2015), set forth the procedures to determine the need for a WQBEL

and, if needed, calculate a WQBEL consistent with applicable water quality standards and WLAs contained in applicable TMDLs. First, projected effluent data are compared with projected limits based on applicable standards and WLAs to determine whether the discharge has a reasonable potential to cause or contribute to exceedances of water quality standards. *See* U.S. EPA NPDES Permit Writers' Manual, EPA-833-K-10-001 (September 2010), at Section 6.3.1 ["Permit Writers' Manual"]. Here, EPA has not demonstrated that discharges from the SRWTF have a reasonable potential to cause or contribute to exceedances of total nitrogen in the Connecticut River or Long Island Sound. In fact, such a conclusion would not be rational, because the SRWTF's discharges historically have remained well below the facility's share of the WLA assigned to Connecticut River dischargers in the LIS TMDL, the agency-approved management tool which was specifically designed to bring Long Island Sound into attainment with applicable water quality standards. Ex. 4, at 29–33; Ex. 6, at pp. 12-25. Contrary to its own guidance, EPA has ignored the actual WLA established in the LIS TMDL and historic effluent monitoring data provided by the Commission, and has not used an EPA or state watershed loading analysis or a facility-specific water quality modeling analysis. *See* Permit Writers' Manual, Section 6.2. Nor has EPA provided a detailed or rational reasonable potential analysis, considering site-specific conditions and other relevant factors set forth in 40 C.F.R. § 122.44(d)(1)(ii). EPA's unsupported statement that the SRWTF discharges have the reasonable potential to cause or contribute to water quality standards violations does not constitute a proper regulatory analysis. *See* 40 C.F.R. § 122.44(d)(1)(ii); Permit Writers' Manual, Section 6.3.2; Ex. 7, at p. 22. In the absence of such an analysis, EPA has not demonstrated that a total nitrogen limit for the SRWTF is necessary.

Even if a limit were demonstrated to be necessary, establishment of a WQBEL requires a rigorous approach including determining WLAs for calculating the associated long-term average

(“LTA”) discharge, selecting the appropriate LTA to serve as the basis for the WQBEL, and then calculating the value to be adopted as the final permit limit. *See* Permit Writers’ Manual (2010), Section 6.4. Under federal regulations, EPA must also ensure that limits established for point sources derive from, and comply with all applicable water quality standards and TMDLs. 40 C.F.R. § 122.44(d)(1)(vii)(A). Finally, any limits must be consistent with the applicable WLAs, such as the WLA found in the LIS TMDL. 40 C.F.R. § 122.44(d)(1)(vii)(B). Moreover, federal regulations require that EPA detail its analysis justifying the adoption of permit limits in the fact sheet to the permit. *See* 40 C.F.R. § 124.56. EPA made none of these demonstrations.

The LIS TMDL determined that a 25 percent reduction in total nitrogen loadings would be required from Connecticut River point sources in order to meet water quality standards in Long Island Sound. Applying that 25 percent reduction, the LIS TMDL established a WLA for Connecticut River dischargers of 16,254 lbs/day. Ex. 4, at p. 29; Ex. 6, at pp. 19–20. The TMDL-based calculated load for SRWTF would be 5,429 lbs/day, which is SRWTF’s share of the allowable wasteload of 16,254 lbs/day based on its share of the total design flow (67 MGD out of 201 MGD). Ex. 4, at p. 31; Ex. 6, at pp. 19–20. That WLA has been met—by the Connecticut River dischargers collectively, and by SRWTF individually—since at least 2005. Ex. 4, at 29–30; Ex. 6, at p. 12. The LIS TMDL remains effective, and has not been withdrawn, modified, or redeveloped. As a result, if a total nitrogen limit is required for the SRWTF, EPA must ensure that it is consistent with its share of the WLA established in the LIS TMDL, or 5,429 lbs/day. EPA has presented no evidence that this WLA is not being met, and has been provided sufficient data to conclude that it is being met. Based on this WLA and proper regulatory analysis of the available data, EPA should have determined that a total nitrogen limit was not necessary.

Instead, EPA imposed its admittedly “new approach” on the SRWTF to generate a mass-based total nitrogen limit derived from the facility’s design flow and an arbitrarily selected target concentration of 5 mg/L. EPA asserts that its approach will ensure that the LIS TMDL targets continue to be met, but provides no discussion of how or why the selected concentrations are necessary or even related to achieving this goal. Ex. 7, at pp. 9–13. EPA argued that it need not await development of an EPA-approved facility-specific WLA, collection of new water quality data, or creation of new models, in order to independently develop and impose a WQBEL stringent enough to meet applicable water quality standards at the time of permit reissuance. *Id.* at pp. 29–31.

The authority that EPA relies upon, however, is misinterpreted and distinguishable. Here, a WLA *does* exist, should be considered “available” under 40 C.F.R. § 122.44(d)(1)(vii)(B), and already is being met. Nothing in the opinion cited by EPA supports the assertion that it can disregard an existing, approved TMDL that “has not yet been updated.” *Id.* At p. 18. If EPA can establish new discharge limits without regard to a clearly-applicable TMDL, then that TMDL becomes meaningless, contrary to federal law. By disregarding the LIS TMDL and the WLA established for Connecticut River dischargers in establishing a new total nitrogen limit for the SRWTF, EPA has violated federal regulations, which require that effluent limits be consistent with applicable WLAs in approved TMDLs. *See* 40 C.F.R. § 122.44(d)(1)(vii)(B).

EPA further asserts that it can impose a more stringent limit than warranted by an available WLA if it is separately justified under 40 C.F.R. § 122.44(d)(1)(vii)(A), which states: “When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that: (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards.”

See *id.* at pp. 20-30. EPA is apparently claiming that this provision allows EPA to establish effluent limits, for dischargers already covered by TMDLs, that are completely independent of the TMDL WLAs that are referred to explicitly in the regulatory provision (§ 122.44(d)(1)(vii)(B)), that follows immediately after that provision. This remarkable claim, which EPA has not made before (and certainly not with regard to this permit) is made with no citation of support, and has no legal basis.

Even if that claim had a legal basis, EPA has made no effort to actually meet the tests laid out in the relevant regulatory provision. In particular, EPA has never demonstrated “the level of water quality to be achieved by” the total nitrogen limits imposed in the Final Permit, nor how that level of water quality is derived from and complies with the applicable water quality standards. EPA’s failure violates not only its regulations, but also the CWA itself, which requires that WQBELs actually be “necessary to meet water quality standards.” 33 U.S.C. § 1311(b)(1)(C). On the other hand, the LIS TMDL explicitly determined the level of water quality to be achieved by reducing nitrogen loads from Connecticut River dischargers. EPA’s conclusion that it must impose more stringent total nitrogen limits on the SRWTF are not rational in consideration of the Commission’s share of the LIS TMDL WLA and the information presented in the record demonstrating that the WLA has been and is being fully met.

Nor do comments by the Connecticut Department of Energy & Environmental Protection (“CT DEEP”) justify imposition of a total nitrogen limit without conducting the required regulatory analyses. EPA asserts that the limit is necessary to ensure compliance with the applicable water quality standards of a “downstream affected state,” in this case Connecticut. *See* Ex. 7, at p. 135 (citing 40 C.F.R. § 122.44(d)(4)). However, no total nitrogen impairments have been identified in Connecticut. And EPA has not conducted a proper regulatory analysis to

demonstrate that the SRWTF discharge has the reasonable potential to cause or contribute to the exceedance of such standards, which currently are being met. Finally, any such impairments in Long Island Sound are being addressed through the WLA assigned to Connecticut River dischargers in the LIS TMDL. EPA has provided no basis to conclude that downstream waters are not sufficiently protected without imposing a new nitrogen limit on the SRWTF.

EPA's failure to follow its own regulatory procedures in establishing the new total nitrogen limit for the SRWTF constitutes clear error. The Final Permit should be remanded and revised to remove the total nitrogen limit.

5. EPA clearly erred by failing to provide sufficient time for SRWTF to meet the new total nitrogen limit, if upheld.

The Commission objected to EPA's proposed annual average total nitrogen limit based on a concentration target of 8 mg/L, and requested a compliance schedule if the limit were retained. Ex. 6, at pp. 12–18. EPA rejected the data provided by the Commission, but asserted that a compliance schedule could be provided through an administrative order. Ex. 7, at p. 145. EPA's rejection of the Commission's request is clearly erroneous. As described above, the BNR process in place at the SRWTF is not intended to achieve performance below 8 mg/L, and has been provided data indicating that violations of a limit based on 8 mg/L are likely. Violations of a limit based on a reduced concentration target of 5 mg/L are even more likely, particularly as flows to the SRWTF increase, and additional time is needed for the Commission to ensure compliance.

Further, an administrative order is inadequate and unnecessarily burdensome. Such an order could subject the Commission to third-party challenges for failure to comply, and higher administrative penalties for failure to comply with a limit that is unachievable. If EPA insists on imposing a total nitrogen limit—particularly one based on a reduced concentration target of 5 mg/L, without incremental increases for future activities—EPA should incorporate a compliance

schedule into the Final Permit to provide the Commission with the flexibility to implement the upgrades that will be necessary to achieve compliance and to integrate them with existing capital initiatives. EPA's failure to provide a compliance schedule constitutes clear error. If the new total nitrogen limit is upheld, the Final Permit should be remanded for inclusion of a compliance schedule.

6. EPA clearly erred in imposing a nitrogen optimization requirement that is impermissibly vague and unnecessary in conjunction with the new total nitrogen limit (Part I.H.1.a at p. 22).

The Final Permit requires the Commission to “continue to optimize the treatment facility operations relative to total nitrogen removal through continued ammonia removal, maximization of solids retention time while maintaining compliance with BOD₅ and TSS limits, and/or other operational changes designed to enhance the removal of nitrogen.” Ex. 1, at p. 22. The Commission objected to the inclusion of similar language proposed in the Revised Draft Permit as unduly vague, and suggested an addition to specify that optimization would be considered achieved based on an annual average benchmark concentration of 8 mg/L total nitrogen. Ex. 7, at p. 18-26. EPA rejected the Commission's suggestion, providing a general definition of “optimize” and stating that “this condition gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited and comply with the requirement by considering objective factors, so that they may act accordingly.” Ex. 7, at 31. Without the benchmark, however, the plain language of the requirement provides no indication of what is meant by “enhance the removal of nitrogen,” or when optimization activities are sufficient to achieve compliance with the permit. The permit condition is impermissibly vague, as it denies the permittee fair notice of what is required under the permit. *See General Electric Company v. United States Environmental Protection Agency*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (providing, “where the regulation is not sufficiently clear to

warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.”)

In addition, in light of EPA’s new approach, including imposing a new total nitrogen limit based on a reduced concentration target of 5 mg/L, no additional optimization should be required. EPA asserts that optimization is reasonably necessary to meet the limit or carry out the purposes or intent of the CWA. Ex. 7, at p. 31 (citing 40 C.F.R. § 122.44(k)(4)). EPA’s assertion, however, is clearly erroneous. As described above, if the new total nitrogen limit is retained, compliance will require substantial plant upgrades, because the BNR process employed at the SRWTF is not designed to reliably achieve concentration benchmarks below 8 mg/L. Once the limit is achieved, no further optimization should be required.

EPA clearly erred in imposing an optimization requirement that is unduly vague and unnecessary if the new total nitrogen limit is upheld. The Final Permit should be remanded for removal of the optimization requirement.

B. EPA clearly erred by including satellite communities as co-permittees in the Final Permit (Parts I.C-E, pp. 1, 16-19).

As stated in comments on the draft permits, the CWA does not authorize EPA to issue NPDES permits to satellite communities, much less to include them as named co-permittees in the Commission’s permit. *See* Ex. 4, at pp. 2–6. NPDES permits are intended to be issued to a single “person,” namely, the owner or (if different) the operator of the point source that discharges pollutants to jurisdictional waters. *See* 33 U.S.C. § 1311(a) (prohibiting “discharges” except in compliance with permits); 33 U.S.C. § 1342(a)(1) (defining “discharge of pollutants”); 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2 (defining “point source”); 33 U.S.C. § 1362(5) (defining “person”); 40 C.F.R. § 122.21(b) (requiring only the operator to apply for a permit where the owner is a different person). Satellite communities neither own nor operate the point source that is

governed by the Final Permit (the SRWTF), so are not appropriate to include as co-permittees. The Commission recognizes that the Region 1 approach has been upheld by the Environmental Appeals Board. However, that opinion has not been subject to judicial review, and Springfield believes that the Region 1 approach constitutes clear error and should be reversed.

In support of its approach, EPA argues that the municipal satellite collection systems are themselves operators of point sources that discharge pollutants to U.S. waters, and thus subject to the NPDES permitting program, even if their contribution to the combination of pollutants in the final discharge from the outfall at the SRWTF operated by the Commission cannot be easily distinguished. This rationale misses the point. The Commission has never asserted that the satellite communities should be unregulated. However, nothing in the CWA authorizes Region 1 to regulate the satellite communities under a *single* NPDES permit *with* SRWTF. The Final Permit should be remanded to remove the co-permittees from the Final Permit.

C. EPA clearly erred in its characterization of, and imposition of requirements relating to, secondary bypasses (Part I.A.1, fn.3, p.5).

The Commission raised several issues in its comments with respect to EPA's treatment of bypasses. *See* Ex. 4, at p. 6–9; Ex. 5, at p. 4.

1. EPA clearly erred by characterizing a bypass of secondary treatment as non-compliance (Part I.A.1, fn.3, p.5).

The Commission requested that the permit language be modified to “authorize,” as opposed to “allow,” a bypass of secondary treatment in Part I.A.1., Footnote 3. The Commission further requested that EPA remove those sections of the permit that identify this treatment process as non-compliant with the permit. *See* Ex. 4, at pp. 7–8. In response, EPA modified the Final Permit language to remove its approval of the bypass of secondary treatment. *See* Ex. 7, at p. 47. This response is inadequate because it does not clearly identify the bypass of secondary treatment under

the circumstances described in the permit as an authorized bypass in accordance with the National CSO Policy Section II.C.7.

The CSO Policy clearly states that a permit may “define the specific parameters under which a bypass can legally occur.” In the Fact Sheet to the Draft Permit, EPA acknowledged that there are “no feasible alternatives” to the secondary bypass. Ex. 3, at Fact Sheet p. 8 (“At this time, there no feasible alternatives to this bypass have been identified without the discharge of additional untreated sewage in system’s CSOs.”). EPA attempted to minimize this statement in the Response to Comments by explaining that it was not a formal determination. Ex. 7, at p. 47. Regardless, EPA previously arrived at the conclusion that no feasible alternatives exist, based on the Commission’s showing, and EPA has no new basis now to reverse its prior conclusion that no feasible alternatives exist.

Despite the clear finding of “no feasible alternatives” in the administrative record, EPA now asserts that it needs additional information in order to support a no feasible alternatives determination to approve a secondary bypass. EPA asserts that the Commission’s August 2016 High Flow Wet Weather Management Standard Operating Procedure (“SOP”), absent further justification, does not satisfy the requirements outlined in Section 7 of the CSO Policy. EPA’s unjustified reversal on this issue constitutes clear error, and the Final Permit should be remanded to authorize a secondary bypass. Alternatively, if EPA’s reversal is upheld, the Final Permit should be remanded to allow the Commission an opportunity and sufficient time to submit a no feasible alternatives analysis.

2. EPA clearly erred by requiring metered readings of the flow volume in the secondary bypass (Part I.A.1, fn.3, p.5).

The Commission also objected to the requirement for metered readings of the flow volume in the secondary bypass line, given the extreme rarity of plant bypasses, the level of effort that

would be required to accomplish this request, and the lack of regulatory authority or need to require internal plant metering of such flows. Ex. 1, at p. 5, fn.3; Ex. 4, at pp. 8–9. EPA’s failure to justify the regulatory authority or need for internal plant metering of bypass flows is clear error, and the Final Permit should be remanded to eliminate the requirement.

3. EPA clearly erred in failing to provide a compliance schedule to implement the requirement to utilize samples of comingled flow to determine compliance (Part I.A.1, fn.3, p.5).

The Commission requested an 18-month compliance schedule to implement the requirement to utilize samples of comingled flow to determine compliance. Ex. 4, at p. 9. As the Commission explained, the 18-month compliance schedule is necessary to allow for the sampling of comingled flows for a period of 12 months over a variety of flow and weather conditions, and to then provide time for an engineering analysis to determine what, if any, plant operations need to be modified to ensure that NPDES permit effluent limits will be met at all times, including during secondary bypass. *Id.* EPA failed to provide the compliance schedule, asserting that the requirements for sampling of comingled flow are not new. Although the 40 C.F.R. § 122.41(j)(1) monitoring requirements are not new, the requirement for sampling at this location is new, and EPA has no regulatory basis for refusing to provide a compliance schedule as requested. EPA’s failure to afford the Commission sufficient time to ensure compliance with the permit limits constitutes clear error, and the Final Permit should be remanded to include the requested compliance schedule.

D. EPA clearly erred by reclassifying Outfall 042 as a CSO rather than a plant emergency bypass (Parts B.1, B.4, H.4, at pp. 1, 10, 15, 23-24).

The Commission provided comments objecting to EPA’s reclassification of Outfall 042 as a CSO. *See* Ex. 4, at pp. 9-12. Specifically, EPA failed to establish an adequate and defensible regulatory basis for the reclassification of this outfall. With the Final Permit, EPA asserted for the

first time that “the inlet structure was not designed to nor does it provide any treatment, and it occurs before the headworks of the WWTP. . . .” Ex. 7, at p. 52. Because the treatment and location issues were not reasonably ascertainable during the public comment periods, as they first arose in the Final Permit and supporting documents, the Commission has a duty to present new information to demonstrate clear error. *See* 40 C.F.R. § 124.13; 40 C.F.R. § 124.19(a)(4)(ii); *see also* *Town of Ashland*, slip.op. at 6.

1. Outfall 042 was designed and has been continuously operated as a plant emergency bypass, which provides treatment and does not meet the definition of a CSO.

In the original SRWTF design, Outfall 042 was intended to serve as the SWRTF’s emergency bypass, as shown on the 1972 record plan G36, Flow Diagram, attached as Exhibit 12. This diagram was attached to previous NPDES permits as part of SRWTF’s process flow diagram, clearly designating Outfall 042 as an emergency bypass. In addition, the original Operation and Maintenance Manual (“O&M Manual”), attached as Exhibit 13, described Outfall 042 as part of SRWTF’s functional design features. Indeed, contrary to EPA’s assertion that the Influent Structure that houses Outfall 042 does not provide any treatment, it actually serves as a unit operation of the SRWTF, with the ability to provide chemical additions and control influent flow. Chlorine treatment is being added at the Influent Structure for odor control. The record plan and the O&M Manual show those treatment functions. Therefore, even using EPA’s new reasoning, the Influent Structure should be considered part of the plant headworks, with both flow control and treatment functions.

CSOs are distinguished from bypasses, which are “intentional diversions of waste streams from any portion of a treatment facility.” 40 C.F.R. § 122.41(m). Bypasses occur when the wastewater is diverted from the head of the wastewater treatment facility (or at a process component within the wastewater treatment facility) to a receiving stream, due to mechanical

failures or precipitation-induced high flows. The main reason for the bypass at Outfall 042 is because of plant's hydraulic capacity limitation. This type of bypass is different from CSOs, which occur when combined storm water and wastewater is discharged directly to the receiving stream because precipitation-induced high flows cannot be directed to the wastewater treatment facility and must be discharged directly to the receiving stream.

In addition, a bypass at Outfall 042 is intentional when the Influent Structure modulates the sluice gates to limit the flow to downstream processes in accordance with their hydraulic capacity. The modulation of the sluice gates at the Influent Structure can be either manual or automatic, depending on plant operator's decision. During wet weather, the operators are required to follow the existing established standard operation procedures described in the high flow management plan to determine whether a bypass at Outfall 042 is needed. Therefore, bypasses at Outfall 042 are "intentional diversions of waste streams from any portion of a treatment facility." *See* 40 C.F.R. § 122.41(m).

The CSO Policy defines a CSO as a "discharge from a CSS at a point prior to the POTW Treatment Plant." Outfall 042, however, is not located "at a point prior to the POTW Treatment Plant." Instead, it is located at a point beyond where flows enter the POTW Treatment Plant Influent Structure. Rather, the Influent Structure and Outfall 042 are an integral part of the plant's headworks, and function together as a "plant protection line" during high flows, to prevent overloading and flooding of the treatment plant processes that would cause damage to equipment as well as health and safety of the plant operation staff. The Influent Structure is part of the plant headworks which provides treatment and controls flow distribution to processes, and has been designed and continuously operated as a plant emergency bypass. It therefore does not meet the definition of a CSO, and EPA's new classification constitutes clear error.

2. Until now, EPA has continuously permitted Outfall 042 as a plant emergency bypass.

Historically, EPA has recognized the outfall as an emergency bypass, and not a CSO, including in the Commission's long-term control plan and integrated wastewater plan.¹ As noted above, EPA has designated Outfall 042 as a plant emergency bypass in all previous NPDES permits for the SRWTF. EPA has provided no new facts or change in operations that would support reclassification of Outfall 042 as a CSO. Indeed, EPA explicitly considered inclusion of Outfall 042 in a separate NPDES permit issued to the Commission for its CSO discharges in 2009. For example, in response to a comment suggesting that Outfall 042 acts as a CSO, EPA declined to include the outfall in the CSO permit, responding that "Outfall #042 has historically been treated as an unauthorized bypass of the wastewater treatment plant." Springfield Water and Sewer Commission, NPDES Permit No. MA0103331 (2009 Reissuance), at p 6, attached as Exhibit 15.

EPA's new argument asserts that the outfall must be classified as a CSO and not an emergency bypass because it does not receive "at least primary clarification, solids and floatables removal and disposal, disinfection." EPA cites the CSO Policy and the CSO Permit Writers Guidance, claiming that CSO-related bypasses must receive at least primary treatment. *See Ex. 7*, at p. 51. This explanation misses the point. Outfall 042 has never been and is not a CSO bypass. It is a *plant emergency* bypass. As such, CSO-related sources that EPA cites for reclassifying outfall 042 are inapplicable. NPDES permits routinely allow emergency bypasses, which do not receive primary treatment because they are activated only in emergency situations where there would not be time to administer primary treatment. Outfall 042 has always been characterized as a plant emergency bypass. EPA has not provided any basis for the reclassification beyond citing

¹ EPA has expressly stated that the analysis in the long-term control plan and integrated wastewater plan is consistent with the CSO Policy. *See* Letter from Susan Studlien to Kathy Pederson (September 18, 2014), attached as Exhibit 14.

to rules and guidance for CSO bypasses, which are not relevant here. EPA's baseless reclassification of outfall 042 constitutes clear error, and the Final Permit should be remanded to classify Outfall 042 as an emergency bypass.

3. If Outfall 042 remains a CSO, the Commission should be allowed sufficient time to provide appropriate treatment (Part I.B.2, p. 12)

Additionally, although the Commission objects to EPA's reclassification of outfall 042 as a CSO, the Commission requested additional time to install control technology if EPA insisted on reclassifying the outfall. Specifically, the Commission requested a three-year timeline from the effective date of the permit to provide sufficient time to install solids and floatables control on the newly-defined CSO. Ex. 4, at p. 15. EPA provided one year for the permittee to comply with this requirement to install solids and floatables control on the newly-defined CSO. EPA's assertion that one year is sufficient to install such controls is not supported by any information in the record. As such, EPA's refusal to afford the Commission with the requested time to comply with the solids and floatables requirements is based on the clearly erroneous finding of fact that the Commission will not require three years to install solids and floatables technology.

E. EPA clearly erred in establishing overly broad and unduly burdensome public notification plan requirements (Part I.B.3.g, pp. 13-14).

The Commission has raised several concerns with respect to the requirements for the public notification plan. *See* Ex. 4, at pp. 12–14; Ex. 5, at p. 4; Ex. 6, at pp. 3–9. The draft permits and the Final Permit contain new, detailed requirements that will result in substantial added costs to the Commission and its ratepayers without any added protection for public health. The CSO Policy provides that one of the NMCs is “public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts.” 59 Fed. Reg. 18688, 18691 (April 19, 1994). The Commission has a plan currently that provides that notification, and EPA has never made any determination that the current plan does not meet the CSO Policy requirements. The new

requirements in the Final Permit far exceed the NMC provision and are based on clearly erroneous conclusions of law and findings of fact. The Final Permit should be remanded for deletion of the new public notification plan requirements.

1. EPA clearly erred in failing to afford sufficient time for the Commission to develop and implement a meaningful public notification plan (Part I.B.3.g.1, 6, pp. 13-14).

The Final Permit requires submission of the Public Notification Plan within 12 months of the effective date and implementation within 24 months of the effective date of the permit. As stated in its comments on the draft permits, the Commission needs a minimum of 36 months to develop and implement a meaningful public notification plan. *See* Ex. 4, at p. 14; Ex. 6, at pp. 3–4. EPA refused to provide the 36 months requested because it “does not believe 36 months. . . is necessary.” Specifically, the Commission needs 36 months in order to solicit appropriate input, determine the content and extent of appropriate notification, develop a web-based notification system that integrates the use of our existing metering program, modeling program, and integration with four strategically located rain gauges, evaluate public posted signs and need for additional public postings, plus other contents of a meaningful public notification plan.

Further, the Commission requested that the submittal requirements reflect the submittal requirements approved in other Regions—namely submittal of a public notification report within 36 months from the effective date of the permit. Ex. 4, at p. 14. Notably, all New Jersey CSO owners and communities (210 CSOs within 26 communities) are required to develop and implement a public notification plan within 36 months of the effective date of their permit. *Id.* Additionally, as the Commission previously comments, the development and implementation of an extensive public notification plan, particularly the implementation of a web-based notification system, cannot be achieved within 24 months of the effective date of the permit. Ex. 6, at p. 3–4. In addition to the significant degree of effort involved in developing the web-based notification system, the

Commission's and the Commonwealth of Massachusetts' procedures for bidding and procurement are extensive and require adequate time for each phase of the design, construction bidding, award, and implementation process. *Id.* These procedures include, but are not limited to: budgeting and obtaining funding from our Board, procurement of engineering services to assist in the program development and design, development and bidding plans and specifications, advertising and bidding process, and contract award—all of which must occur prior to beginning work on the contract. *Id.*

EPA acknowledged, but dismissed, the Commission's logistical and procurement concerns, and stated that other communities were able to develop plans within 12 months. Ex. 7, at p. 119. EPA's example of communities developing plans within 12 months does not address the fact that other communities received 36 months to implement the same plan. EPA broadly refers to the human health and environmental concerns associated with CSO discharges, but failed to provide any regulatory basis to impose a shorter deadline for implementation, especially in light of the fact that EPA has afforded 36 months to other permittees. EPA's finding that 36 months is unnecessary for this permittee is unsupported and clearly erroneous, and the Final Permit should be remanded and revised to provide the Commission with 36 months to implement the Public Notification Plan.

2. EPA clearly erred in requiring initial notification within two hours (Part I.B.3.g.2, p. 14).

In consideration of the significant number of CSOs within the SRWTF system, the varied locations of these CSOs, and staffing and resource constraints, the Commission previously requested that a four-hour, as opposed to two-hour, initial notification be provided. *See* Ex. 6, at pp. 5–6. Four hours is consistent with the timeframe EPA approved at 40 C.F.R. § 122.38(a)(2)(i) for CSO dischargers to the Great Lakes Basin. EPA declined to extend the initial notification from two to four hours and determined that the two-hour timeframe was reasonable given the uses of the receiving water, the proximity of the discharges to the Connecticut border, and the estimated

time of travel from the discharges to the state border, which is approximately two hours. Ex. 7, at 120.

Proximity to the state border, however, should not dictate the length of time of the initial notification. Rather, EPA should consider other more appropriate factors, such as whether the length of time is long enough to allow permittees to initiate notification and to allow the public to make informed decisions. In establishing a four-hour initial notification time-period for Great Lakes Basin discharges, for example EPA reasoned that “four hours...is prompt enough to allow the public to make informed decisions regarding areas where they would visit and recreate before doing so; while it is also a long enough amount of time to allow permittees to initiate notification processes.” 83 Fed. Reg. 712,725 (January 8, 2018). There is no reason that EPA’s practical determination regarding how long public notification takes in the Great Lakes would be any different in Massachusetts. EPA made the finding that four hours is both prompt enough to allow the public to make informed decisions and enough time to allow permittees to initiate notification, and EPA has provided no justification for why that determination would not apply in Massachusetts. EPA’s contrary findings with respect to notification timing for dischargers in Massachusetts is clearly erroneous, and the Final Permit should be remanded and revised to provide a four-hour initial notification.

3. EPA clearly erred in requiring supplemental notification within twenty-four hours (Part I.B.3.g.3, p. 14).

In its comments, the Commission requested that EPA revise the supplemental notification provision to provide for a 7-day supplemental notification following cessation of all CSOs (as opposed to 24 hours). *See* Ex. 7, at pp. 6–8. The longer timeframe would provide the Commission with greater ability to validate the information to be posted. EPA disagreed with the Commission’s recommendation to change the deadline for the supplemental notice from 24 hours to 7 days,

asserting that providing supplemental notice within 24 hours provides the public with important information necessary to inform the public of ongoing public health risks, particularly with regard to the termination of the CSO event. Ex. 7, at pp. 120–21. This explanation, however, fails to address why the 7-day timeframe would not provide the public with sufficient information regarding ongoing health risks. As noted in public comments, EPA has failed to establish what additional benefit is provided in terms of public notification and health, by estimating and publishing CSO volumes within 24 hours, versus the significant cost, and the inherent unreliability, of such numbers. Ex. 6, at p. 7. EPA provided no response to the Commission’s comments regarding the inherent unreliability of estimating CSO volumes within 24 hours. EPA’s finding that the 24-hour timeframe is necessary to inform the public of ongoing health risks is unsupported and clearly erroneous, and the Final Permit should be remanded and revised to provide a 7-day supplemental notification time period.

4. EPA clearly erred in requiring the specific location of each discharge (Part I.B.3.g.2–3, p. 14).

The Commission previously requested that when reporting the CSO location, the permittee should be able to do so in the manner EPA has previously approved under the Great Lakes rule 40 C.F.R. § 122.38(a)(2)(B):

Where CSO discharges from the same system occur at multiple locations during the same precipitation-related event. . . the CSO permittee may provide a description of the area in the waterbody where discharges are occurring. . . and the permittee is not required to identify the specific location of each discharge.

See Ex. 6, at pp. 5–6.

EPA rejected the Commission’s request, asserting that “merely providing a description of the area in the waterbody where CSO discharges are occurring. . . would not be appropriate given the number of CSOs that are located within a relatively small geographic area, the uses of the receiving water which may be negatively impacted by discharges of untreated combined

wastewater and the proximity of the downstream State of Connecticut.” Ex. 7, at p. 120. EPA’s justification is not rational given the information in the record, and is clearly erroneous. Identifying the individual locations provides no added benefit or additional useful information, especially if the CSOs are located within a relatively small geographic area. A description of the waterbody where the CSOs are located would provide the same general information, without the unnecessary burden of specifying the individual locations. EPA’s justification for requiring the specific location of each discharge is clearly erroneous, and the Final Permit should be remanded to remove this requirement.

F. EPA clearly erred by including a prohibition of septage to the combined collection system during wet weather (Part I.B.3.c, p. 12).

The Commission previously objected to language prohibiting “discharges to the combined system of septage, holding tank wastes, or other material, which may cause a visible oil sheen or containing floatable material are prohibited during wet weather when CSO discharges may be active.” Ex. 4, at p. 20–21. Because wastewater (separate as well as combined) typically contains floatable material, the Commission objected to the inclusion of “or containing floatable material” in this section. *Id.* Such a permit requirement is not rational, because there is no way to practically manage such discharges into the combined systems through sanitary sewer connections. *Id.* Accordingly, the Commission requested that the language pertaining to the prohibition of septage to the combined collection system be deleted. *Id.*

EPA responded recognizing that the permittee cannot manage such discharges from some sanitary sewer connections, specifically domestic sources. Ex. 7, at p. 68. Nonetheless, EPA stated that the permit provision is required as the minimum implementation level for complying with NMC 3 (review and modification of the pretreatment program to assure CSO impacts are minimized), NMC 6 (Control of solid and floatable materials in CSOs), and NMC 7 (pollution

prevention programs that focus on contaminant reduction activities). *Id.* EPA reasoned that the permittee could control the addition of floatable materials for commercial and industrial sources through its pretreatment program. Accordingly, EPA modified the Final Permit language to read as follows:

Except for discharges from domestic sources to the sanitary sewer system, discharges to the combined system of septage, holding tank wastes, or other material, which may cause a visible oil sheen or containing floatable material are prohibited during wet weather when CSO discharges may be active.

Id.; Ex. 1, at p. 12.

This revision, however, does not address the Commission's initial concern that there is no way to practically manage such discharges into the combined systems through sanitary sewer connections. It is not rational to require the permittee to prohibit industrial discharges during wet weather. Further, as explained in the Commission's public comments, the plant's performance is not impacted by septage during wet-weather events, as all septage receives screening and grit removal and all secondary bypass flows receive screening, grit removal, primary treatment and disinfection. Ex. 4, at p. 20–21. Accordingly, this contested provision prohibiting septage to the combined collection system does not ensure, or even promote, compliance with the NMCs. EPA has advanced no regulatory basis for this prohibition and clearly erred in included this modified prohibition in the Final Permit. The Final Permit should be remanded to remove the prohibition of septage to the combined collection system during wet weather in its entirety.

G. EPA clearly erred by imposing overly broad NMC requirements beyond the scope of the CSO Policy (Part I.B.3.e, p. 13).

The Commission previously objected to the extensive and over-reaching nature of EPA's determination of NMC 9 governing monitoring to characterize CSO impacts and the efficacy of CSO controls. *See* Ex. 4, at pp. 17–18; Ex. 6, at pp. 9–10. Specifically, the Commission objected

to the collection of additional data such as hours and volume of discharge as necessary to comply with the NMC requirements outlined in the CSO Policy. NMC guidance provides that “NMC are controls that. . . do not require significant engineering studies or major construction, and can be implemented in a relatively short period. . . .” “Combined Sewer Overflows Guidance for Nine Minimum Controls,” EPA 832-B-95-003 (May 1995), at p. 1–6 *available at* <https://www3.epa.gov/npdes/pubs/owm0030.pdf>. Based on the request to remove the requirements to report hours and volume of discharge, the Commission also requested that EPA remove the language requiring quantification of such data through direct measurement.

EPA responded that it was unclear how the requirement to report hours and volume of discharge would result in excessive costs to the Commission. Ex. 7, at p. 64. Finding that the costs of such reporting are not excessive does not justify how the requirement falls within the scope of the NMC. EPA retained the requirement to report hours and volume of discharge and failed to justify any regulatory basis for doing so. EPA’s finding that such requirements would not be burdensome or costly and its conclusion that the NMC requires the reporting of hours and volume of discharge are clearly erroneous. The Final Permit should be remanded to remove the requirements to report hours and volume of discharge and quantify the same through direct measurement.

H. EPA clearly erred by failing to remove the permit references to “dry weather” (Part I.A.1.e, p. 9; I.B.3.d, p. 13; I.H.3.a, p. 24).

The Commission previously objected to the Draft Permit’s reference to “dry weather” in defining CSO discharges. *See* Ex. 4, at p. 19. Although not initially included in the Draft Permit, the Commission objected to the definition of “dry weather,” explaining that it is not uncommon for a CSO to discharge with 0.1 inches of rain, depending on the intensity of the storm and the location of the rain measurement gauge in relationship to the CSO discharge. *Id.* The Commission

objects to this definition of dry weather because the measurement of snow melt is not clearly defined or determined. *Id.* For example, during a sunny, warm winter day, a significant amount of snow melt could trigger a CSO discharge. *Id.* Rather than removing the reference to “dry weather,” EPA included the definition in several places in the Final Permit. *See* Ex. 1, at pp. 9, 12, 23. EPA justified the additions of the “dry weather” definitions as consistent with the CSO Policy. Ex. 7, at pp. 65–66. The Agency failed to address the Commission’s concerns that a wet weather overflow could occur during “dry weather” under the conditions described above. *See id.*; *see also* Ex. 1, at pp. 9, 12, 23. The fact that EPA has defined “dry weather” in accordance with the CSO Policy is not a sufficient justification for inclusion of any reference to “dry weather” in the permit. Nor is it sufficient justification for failure to address discharges caused by snow melt. The added definitions do nothing to address, and in fact reinforce, the Commission’s concerns that a CSO could discharge with 0.1 inches of rain depending on the intensity of the storm, and EPA could erroneously characterize the discharge as a dry weather overflow based on the “dry weather” definition in the permit. The unnecessary and unjustified references to “dry weather” in the Final Permit are clearly erroneous, and the Final Permit should be remanded to remove all references to “dry weather.”

I. EPA clearly erred by failing to clarify the vague operation and maintenance requirements (Part I.D, pp. 16–18).

The Commission previously objected to certain requirements contained in Part I.D. *See* Ex. 4, at p. 21–22. Specifically, the Commission requested that EPA identify which of the seven co-permittees owns which treatment works. *Id.* The Commission also objected to the language requiring the permittees to maintain an ongoing preventative maintenance program “with the goal” to prevent overflows and bypasses. *Id.* EPA declined to clarify which co-permittee owns which portions of the collection system, stating that the co-permittees are in the best position to delineate

the reach of their collection systems. Ex. 7, at p. 70. EPA also declined to modify the language in Part I.D.2, stating that the provision was important to ensure compliance with the permit and attainment of the CWA's goals. *Id.* at 71. The Commission disagrees. EPA's finding that it is not in a position to delineate portions of the collection system among co-permittees is clearly erroneous. Similarly, EPA's finding that the vague language requiring the permittees to maintain an ongoing preventative maintenance program "with the goal" to prevent overflows and bypasses cannot be clarified to provide more regulatory certainty is clearly erroneous. Accordingly, the Final Permit should be remanded and revised to promote clarity and regulatory certainty as to these provisions.

J. EPA clearly erred in failing to afford sufficient time to complete collection system mapping (Part I.D.4, p. 17).

The Final Permit requires that the Commission and its co-permittees prepare a map of their respective sewer collection systems. Ex. 1, at p. 17. As stated in its comments on the Draft Permit, the Commission requested that 36 months be provided to allow sufficient time to comply with required procurement processes and provide a meaningful work product. *See* Ex. 4, at p. 22. Notably, affected co-permittees also raised concerns regarding significant burdens that this and other new requirements place on co-permittees, many of which did not apply to be regulated under the permit, do not own or operate a wastewater treatment facility, and have never before been subject to an NPDES permit. Ex. 7, at p. 151–52. EPA refused to provide the 36 months requested, reasoning that "municipalities have typically not have had an issue with meeting this requirement." EPA provided no regulatory basis, beyond its own anecdotal observation, to impose a shorter deadline for implementation. EPA's finding that 36 months is unnecessary is unsupported and clearly erroneous, and the Final Permit should be remanded and revised to provide the Commission and co-permittees with 36 months to complete collection system mapping.

K. EPA clearly erred in failing to afford sufficient time to complete an operation and maintenance plan (Part I.D.5.a–b, pp. 17–18).

Part I.D.5(a) of the Final Permit requires the submission of a report, within six months, that provides a description of the collection system management goal; staffing information management; legal authorities; a list of pump stations, recent studies, and construction activities; and a plan for the development of a comprehensive operation and maintenance plan. Ex. 1, at pp. 17–18. Subpart (b) requires that a complete and comprehensive Operation and Maintenance Plan be completed, implemented, and submitted to EPA and MassDEP within 24 months. *Id.* at 18. As stated in its comments on the Draft Permit, six months is an insufficient amount of time to research, analyze, describe and report on these numerous items, particularly for any co-permittees who may not have done this in the past. *See* Ex. 4, at p. 23. Notably, the Commission and its co-permittee each have its own procurement process, which typically takes 9 to 12 months and requires board, City/Town council or meeting, and/or public work committee for approval of funding; preparation of request for proposal to select consulting firm; and negotiation of contract with selected firm to start the work. *Id.*

Similarly, the Part (b) requirements represent a “tremendous undertaking requiring an extensive amount of time and resource, particularly for any co-permittees who do not already have the prescribed Operation and Maintenance Plan.” *Id.* Additionally, the municipalities’ individual procurement processes, which would be necessary for the selection of a consulting firm to perform this work, generally take 9 to 12 months, as described above. *Id.* Accordingly, the Commission requested that 18 months be provided for the completion of section (a) and 36 months be provided for the completion of the O&M plan under section (b). *Id.*

EPA refused to incorporate the requested timeframes, reasoning that “for more than 10 years permittees and co-permittees have been able to fulfill these requirements within this timeframe,

utilizing available resources and expertise.” Ex. 7, at 74. Again, EPA has failed to provide any regulatory basis, beyond its own anecdotal observations, to impose a shorter deadline for implementation. EPA’s finding that 6 and 24 months is a reasonable amount of time to comply with Parts I.D.5(a) and (b), respectively, is unsupported and clearly erroneous, and the Final Permit should be remanded and revised to provide the Commission and co-permittees with adequate time to implement the permit requirements.

L. EPA clearly erred in failing to afford sufficient time for the permittee to comply with the pretreatment requirements (Part I.G.1, p. 21).

The Final Permit requires that the permittee prepare and submit a written technical evaluation to the EPA analyzing the need to revise local limits within 120 days of the effective date. Ex. 1, at p. 25. As the Commission described in its comments on the Draft Permit, its procurement process—which includes board approval for funding, preparation of request for proposal to select consulting firm, negotiation of contract with selected firm to start the work—typically takes 9–12 months. *See* Ex. 4, at p. 23–24. Accordingly, the Commission commented that 120 days is an insufficient amount of time in which to prepare a technical report to EPA regarding the need to revise local limits. *Id.* In addition, the Draft Permit required the permittee to complete the revisions within 120 days of notification by EPA and submit the revisions to EPA for approval, which the Commission objected to as a similarly an insufficient amount of time to complete such an analysis. *Id.* Accordingly, the Commission requested that 18 months be provided for the preparation of a technical evaluation analyzing the need to revise local limits and that an additional 18 months be provided to revise local limits, if needed. *Id.*

EPA responded that the amount of time provided for the technical evaluation has proven sufficient for other municipal permittees. EPA failed to provide any regulatory basis, beyond its own anecdotal observations, to impose the 120-day deadline for the technical evaluation. EPA did provide

18 months to revise and finalize local limits, but this still does not provide the Commission with enough time to complete both the technical report and the revision of local limits. In light of the Commission's justification for the 18-month timeframe to submit a technical evaluation, EPA's refusal to modify the timeframe is not rational and clearly erroneous, and the Final Permit should be remanded and revised to provide the Commission with adequate time to submit the technical evaluation.

M. EPA clearly erred in failing to provide an 18-month schedule for compliance with the new *E. coli* limits (Part I.A1, fn.7, at p. 6; Part I.H.2.a, p. 23).

As the Commission noted in its comments, the Final Permit requires compliance with *E. coli* limits for the first time. *See* Ex. 4, at p. 24. The Commission explained that it has no objection to the change in pathogen criteria from fecal coliform to *E. coli*, but requested an 18-month period of time to review plant performance relative to *E. coli*, adjust disinfection levels if needed, and better understand plant performance under all weather conditions, prior to this new limit becoming effective. *Id.*

EPA agreed that a compliance schedule is warranted, but failed to provide the 18 months requested. Ex. 7, at p. 75. EPA asserted that, pursuant to 40 C.F.R. § 122.47(a)(1), the compliance schedule must lead to compliance "as soon as possible." Further, because the new *E. coli* requirement will not require any plant upgrades, EPA reasoned that a 12-month compliance schedule was warranted. *Id.* However, the Commission did not state that it needed 18 months because the new requirement will require plant upgrades; as explained, the Commission needs 18 months to review plant performance and adjust disinfection levels. *See* Ex. 4, at p. 24. EPA failed to adequately respond to the Commission's comments, and its finding that a 12-month compliance schedule provides the Commission with enough time to comply with the new *E. coli* requirement is unsupported and clearly erroneous. Accordingly, the Final Permit should be remanded and revised to provide the requested 18-month compliance schedule.

N. EPA clearly erred by failing to provide any opportunity for comment on the new phosphorus monitoring requirements (Part I.A.1, p. 3; Part I.A.1, fn.9, p. 7; Part I.H.3, p. 23).

The Final Permit imposes new monitoring requirements for phosphorus that were not previously included in the Draft Permit or Revised Draft Permit. Ex. at pp. 3, 7, 23. As a result, the Commission had no opportunity to comment on this new condition. EPA violated the public notice requirements of 40 C.F.R. § 124.10 by failing to provide any opportunity for comment on the new phosphorus requirements. This violation of 40 C.F.R. § 124.10 constitutes clear error, and the Final Permit should be remanded on this basis to provide the public with an opportunity to comment on the new phosphorus requirements.

VII. CONCLUSION

For the foregoing reasons, the Region clearly erred in issuing the Final Permit over the Commission's detailed objections, and Petitioner respectfully requests that the Board remand NPDES Permit No. MA0101613.

Respectfully submitted,

/s/ Fredric P. Andes

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Date: October 30, 2020

REQUEST FOR ORAL ARGUMENT

Petitioner, Springfield Water and Sewer Commission, respectfully requests oral argument before the Environmental Appeals Board on its petition for review of NPDES Permit No. MA0101613 because it believes oral argument will be of assistance to the Board.

STATEMENT OF COMPLIANCE WITH THE WORD/PAGE LIMITATION

In accordance with 40 C.F.R. § 124.19(d)(1)(iv) & (d)(3), I hereby certify that this Petition does not exceed 14,000 words. Not including the transmittal letter, caption, table of contents, table of authorities, figures, signature block, table of attachments, statement of compliance with the word limitation, and certification of service, this Petition contains 13,991 words.

/s/ Fredric P. Andes

Fredric P. Andes

TABLE OF EXHIBITS

Exhibit	Name of Document
1	Final Permit
2	Revised Draft Permit
3	Draft Permit
4	February 9, 2018 SWSC Comments on Draft Permit
5	April 27, 2018 SWSC Supplemental Comments on Draft Permit
6	October 15, 2018 SWSC Comments on Revised Draft Permit
7	Response to Comments
8	Long Island Sound 2001 TMDL Implementation – Summary of Massachusetts Total Nitrogen Annual Average Loading Limits,” EPA Region 1 (June 7, 2019)
9	2020 Draft Permit (No. NH0100790) Issued to the City of Keene, New Hampshire
10	Statistical Calculation of Historical Flows
11	Reliability Analysis
12	Flow Diagram
13	O&M Manual
14	Letter from Susan Studlien to Kathy Pederson (September 18, 2014)
15	Springfield Water and Sewer Commission, NPDES Permit No. MA0103331 (2009 Reissuance)

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2019 a copy of the foregoing Petition for Review was served on to the following persons, in the manner specified below. Because the electronically-filed attachments in support of the Petition for Review exceed 50 pages in total, paper copies were sent to the EAB on October 30, 2020 via United States First Class Mail. I certify that the paper submission sent to the EAB is identical to the electronic submission.

By electronic filing to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, N.W.
WJC East Building, Room 3332
Washington, D.C. 20004

By U.S. First Class Mail to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
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