



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

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OFFICE OF THE
REGIONAL ADMINISTRATOR

December 6, 2023

VIA ELECTRONIC FILING

Mr. Emilio Cortes
Clerk of the Board
U.S. EPA Environmental Appeals Board
1200 Pennsylvania Avenue, NW (Mail Code 1103M)
Washington, D.C. 20460-0001
Clerk_EAB@epa.gov

Mr. Guilford Mooring
Superintendent
Amherst Public Works Department
586 South Pleasant Street
Amherst, MA 01002
mooringg@amherstma.gov

**RE: Town of Amherst Wastewater Treatment Plant
NPDES Permit No. MA0100218; NPDES Appeal No. 23-05
Notice of Permit Provision Withdrawal &
Notice of Uncontested and Severable Permit Conditions**

Dear Mr. Cortes and Mr. Mooring:

The Environmental Protection Agency (“EPA”), Region 1, (“the Region”) reissued a final National Pollutant Discharge Elimination System (“NPDES”) Permit (“Final Permit”), No. MA0100218, to the Town of Amherst (“Permittee”) for its Wastewater Treatment Plant on October 19, 2023. On November 17, 2023, the Permittee filed a timely Petition for Review (“Petition”) of the Final Permit with the Environmental Appeals Board (“EAB”). In accordance with 40 C.F.R. § 124.19(j). As described below, the Region is providing notice that it is hereby withdrawing the permit provision contested by the Permittee. Additionally, in accordance with 40 C.F.R. §§ 124.16 and 124.60, the Region is providing notice of uncontested and severable permit conditions in connection with all remaining provisions of the Final Permit.

The Permittee objected to the season for the *E. coli* effluent limit and monitoring, which would span from March 1 through October 31 after the first 12 months of the permit (Final Permit at Part I.A.1). See Petition at 1-2. The draft permit and the Permittee’s previously reissued permit on June 26, 2012 (“Prior Permit”) imposed the *E. coli* effluent limit and monitoring from April 1

through October 31.

Permit Provision Withdrawal

Pursuant to 40 C.F.R. § 124.19(j), the Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review, may, upon notification to the EAB and any interested parties, withdraw the permit or portions thereof, and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. After due consideration of the Petition, pursuant to 40 C.F.R. § 124.19(j), the Region hereby withdraws the *E. coli* effluent limit and monitoring requirements during the month of March contained in the Final Permit at Part I.A.1. The Region intends to prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. The new draft permit provision will be subject to notice and an opportunity to comment pursuant to 40 C.F.R. § 124.10.

The Region recognizes the concern about bacteria in the Connecticut River and intends, in collaboration with the Massachusetts Department of Environmental Protection (“MassDEP”), to systematically review the issue with respect to all wastewater treatment facilities discharging into the River and the extent of recreational use of the River during November through March. Interested parties will have an opportunity to comment on the issue during the future public comment period(s) and the Region intends to consider all public comments received to assist in further developing the record on this issue.

Until such time as the Region issues a final permit pertaining to the withdrawn *E. coli* effluent limit and monitoring season, the corresponding provisions of the Prior Permit shall remain in effect. *See In re City of Keene Wastewater Treatment Facility*, Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot, NPDES Appeal No. 07-18 (E.A.B. Dec. 2007). That is, the season for the *E. coli* requirements is April 1 – October 31.

Notice of Uncontested and Severable Conditions

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

Because the Region has withdrawn the contested *E. coli* monitoring and chlorination limit in Part I.A.1 of the Final Permit, there are no remaining contested permit conditions. Concurrent with the filing of this Notice, the Region will also file a motion to dismiss the petition for review as moot in its entirety, pursuant to 40 C.F.R. § 124.19(f). Upon (1) the anticipated issuance of a Board order granting the motion to dismiss as moot and (2) the Regional Administrator’s issuance of a final permit decision under 40 C.F.R. § 124.19(1)(2), the contested *E. coli* effluent limit and monitoring seasonal requirements will neither be contested nor stayed. EPA has determined that all other conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable on February 1, 2024.

If you have any questions regarding this notice, please contact Megan Edwards of the Office Regional Counsel at 617-918-1542 or Kassandra Kometani of the Office of Regional Counsel at 617-918-1852.

Sincerely,

David W. Cash
Regional Administrator
U.S. EPA Region 1

cc: Lealdon Langley, MassDEP
Beth Kudarauskas, EPA
Todd Borci, EPA