

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

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In the Matter of: )  
 )  
City of Nashua )  
Wastewater Treatment Facility )  
 )  
NPDES Appeal No. 15-06 )  
NPDES Permit No. NH0100170 )  
\_\_\_\_\_)

**ASSENTED-TO MOTION TO PARTIALLY DISMISS THE PETITION FOR REVIEW  
AS MOOT**

On April 13, 2015, the City of Nashua, New Hampshire petitioned the Environmental Appeals Board (“EAB” or “Board”) for review of a final National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA Region 1 authorizing discharges of wastewater effluent from the City’s Wastewater Treatment Facility (“WWTF”) to the Merrimack River, as well as from nine Combined Sewer Overflows to the Merrimack and Nashua Rivers.

Under the regulations governing the EAB appeals process, the Regional Administrator may, at any time prior to 30 days after filing the response to the petition and upon notification to the Board, unilaterally withdraw portions of the permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. 40 C.F.R. § 124.19(j); *see also* 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). In an effort to narrow the issues on appeal, the Region has determined to exercise that right by commencing permit modification proceedings to address issues raised by the City in Sections IV.C.3 and IV.M and of the Petition. Specifically, the Region intends to modify the following conditions to add or extend compliance schedules:

<b>Permit Section</b>	<b>Description</b>	<b>Petition</b>	<b>Summary of Proposed Modification</b>
Part I.E.5	Compliance Schedule for the Collection System and Operation and Maintenance Plan	Section IV.M	EPA will propose to modify the Final Permit to extend the schedule to complete the Plan from 24 months, as currently set forth in the Final Permit, to 36 months
Part I.A.1	Compliance Schedule for Total Phosphorus Limitation	Section IV.C.3	The Final Permit does not currently contain a compliance schedule to achieve the Total Phosphorus Limitation of 0.8 mg/l. EPA will propose to modify the Final Permit to include a reasonable compliance schedule to achieve the limit.

See Letter dated June 12, 2015 from H. Curtis Spalding, Regional Administrator, EPA Region 1, to Lisa Fateaux, City of Nashua, and Eurika Durr, Clerk, Environmental Appeals Board, re Notice of Partial Withdrawal Pursuant to 40 C.F.R. § 124.19(j); see also U.S. EPA Region 1's Notice [of] Intent to Withdraw and/or Modify Portions of the Permit, EAB Dkt. No. 3 (May 13, 2015).

Consequently, the Region submits that the issues presented in Sections IV.M and IV.C.3 of the Petition for Review are rendered moot and, therefore, respectfully requests dismissal of these sections of the Petition. See *In re E.I. DuPont De Nemours & Co.*, RCRA Appeal Nos. 13-01 & 13-02 (EAB May 14, 2014) (Order Dismissing Appeals); *In re Teck Alaska, Inc.*, NPDES Appeal No. 10-04, slip op. at 4-5 (EAB Apr. 30, 2010) (Order Dismissing Petitions for Review

in Part and Denying Cross-Motion to Stay the Entire Permit) (holding that Region's partial withdrawal of contested permit provisions rendered sections of the Petition for Review moot); *In re San Jacinto River Auth.*, NPDES Appeal 07-19 (March 28, 2008) (Order Dismissing Petition for Review); *In re City of Keene Wastewater Treatment Facility*, NPDES Appeal No. 07-18 (EAB Dec. 5, 2007 (Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot). Moreover, dismissal of these issues would have no effect on Nashua's rights to submit comments on the draft permit modifications or to seek Board review of any final modification of NPDES Permit No. NH0100170 in accordance with 40 C.F.R. § 124.19. *In re San Jacinto*, slip op. at 4. Finally, the Region has contacted Nashua regarding dismissal of these issues and represents to the Board that the City assents to this motion. *See* 40 C.F.R. § 124.19(f)(2).

Dated: June 12, 2015

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Partially Dismiss the Petition as Moot, in the matter of Nashua Wastewater Treatment Facility, NPDES Appeal No. 15-06, were served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

By Electronic Mail and U.S. Mail:

Sherilyn Burnett Young, Esq.  
Marcia Brown, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, NH 03302-1500

Dated: June 12, 2015

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Samir Bukhari