

On December 11, 2020, EPA Region 1 (“EPA”) filed the Certified Index to the Administrative Record (“Certified Index”) of NPDES Permit No. MA0101613, issued to the Springfield Water and Sewer Commission. On March 5, 2021, the Environmental Appeals Board (“Board”) issued an Order Requiring Documents to be Included in the Administrative Record (“Order”). The Board’s Order identified two specific documents to be included in the Administrative Record: Office of Water, U.S. EPA, No. 832-B-95-002, Combined Sewer Overflows – Guidance for Long-Term Control Plan G-1 (1995) and the Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18,688 (Apr. 19, 1994), citing to 40 C.F.R. § 124.17(b).

Under 40 C.F.R. § 124.17(b), “For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18.”¹ EPA has reviewed the Response to Comments and has identified the following documents, including the two documents identified by the Board, that EPA expressly cited in responding to comments, but that were not individually listed in the relevant section of the Certified Index of the Administrative Record:

¹ Pursuant to 40 C.F.R. § 124.18(e),

Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 (“Response to comments”), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

The Region has in the past construed 40 C.F.R. § 124.18(e) to not require EPA to individually catalogue each generally available document expressly cited by EPA in responding to comments, because these documents are by definition part of the administrative record. *See* 40 C.F.R. § 124.17(b). In most cases, the Region’s response to comments includes hyperlinks to these documents. EPA observes that there has been no dispute in this case over what constitutes the administrative record. EPA will conform its administrative record practice to be fully consistent with the Board’s Order going forward, *i.e.*, EPA will individually catalogue in the administrative record each document cited in responses to comments, even if “generally available.”

OTHER PERMIT DOCUMENTS

Final Permit, NPDES Permit No. MA0101613. Sept. 29, 1995.

303(D), 305(B), AND TMDL-RELATED MATERIALS

Guidance. *Handbook for Developing Watershed TMDLs*, Office of Wetlands, Oceans & Watersheds, U.S. EPA (2008) (Draft). Published Online:

https://19january2017snapshot.epa.gov/sites/production/files/2015-10/documents/2009_01_09_tmdl_draft_handbook.pdf

Federal Register Notice. Water Quality Standards Regulation, 47 Fed. Reg. 49,234 (Oct. 29, 1982)

Federal Register Notice. Water Quality Standards Regulation, 48 Fed. Reg. 51,400 (Nov. 8, 1983)

Federal Register Notice. NPDES Surface Water Toxics Control Program, 54 Fed. Reg. 23,868 (June 2, 1989)

CSO MATERIALS

Federal Register Notice. “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994). Published Online:

<https://www.epa.gov/sites/production/files/2015-10/documents/owm0111.pdf>

Guidance. “Combined Sewer Overflows Guidance for Long-Term Control Plan,” EPA-832-B-95-002. 1995. Published Online:

<https://www3.epa.gov/npdes/pubs/owm0272.pdf>.

Federal Register Notice. “National Pollutant Discharge Elimination System Permit Regulations,” 49 Fed. Reg. 37998, 37998-01 (Sept. 26, 1984)

Federal Register Notice. “Public Listening Session; Stakeholder Input on Peak Flows Management,” 83 Fed. Reg. 44623-01 (Aug. 31, 2018). Published Online:

<https://www.federalregister.gov/documents/2018/08/31/2018-19016/public-listening-session-stakeholder-input-on-peak-flows-management>

Federal Register Notice. “Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin,” 83 Fed. Reg. 712-01 (Jan. 8, 2018). Published Online:

<https://www.federalregister.gov/documents/2018/01/08/2017-27948/public-notification-requirements-for-combined-sewer-overflows-to-the-great-lakes-basin>

Springfield Water & Sewer Commission’s Updated Nine Minimum Control Report (April 2010)

OTHER TECHNICAL AND SCIENTIFIC DOCUMENTS

Federal Register Notice, *The National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*, 79 Fed. Reg. 49001 (Aug. 19, 2014). Published Online:

https://www.epa.gov/sites/production/files/2015-09/documents/pwm_2010.pdf

LEGAL AUTHORITIES

The Clean Water Act, 33 U.S.C. § 1251 *et seq.*

40 C.F.R. Part 122

40 C.F.R. Part 124

40 C.F.R. Part 125

40 C.F.R. Part 130

40 C.F.R. Part 131

40 C.F.R. Part 133

40 C.F.R. Part 403

Massachusetts Surface Water Quality Standards, 314 Mass. Code Regs. § 4.00 *et seq.*

Massachusetts Operation, Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers, 314 Mass. Code Regs. § 12.00 *et seq.*

Connecticut Water Quality Standards, R.C.S.A. § 22a-426-1 *et seq.*

Connecticut Sewer Overflows Public Notice, C.G.S.A. § 22a-424a.

MISCELLANEOUS

Principal brief of EPA Region 1 in *Charles River Pollution Control District*, 16 EAD 623 (EAB 2015) (September 26, 2014)

[https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/C158D222DA78251E85257D63004CC1EA/\\$File/Region%201%20Response%20to%20CRPCD%20Petition%20\(092614\).pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/C158D222DA78251E85257D63004CC1EA/$File/Region%201%20Response%20to%20CRPCD%20Petition%20(092614).pdf)

City of Chicopee Water Pollution Control Facility Final NPDES Permit No. MA0101508 (August 15, 2012)

<https://www3.epa.gov/region1/npdes/permits/2012/finalma0101508permit.pdf>

Northfield Mount Hermon School Draft NPDES Permit No. MA0032573 (July 12, 2018)

<https://www.epa.gov/sites/production/files/2018-06/documents/draftma0032573permit.pdf>

Finally, EPA has reviewed the entire permit file and verifies that the First Amended Certified Index of the Administrative Record reflects the complete administrative record of the Permit.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Certified Index of the Administrative Record, in connection with *In re Springfield Water and Sewer Commission*, NPDES Appeal No. 20-07, was sent to the following persons in the manner indicated:

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Dated: March 17, 2021

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