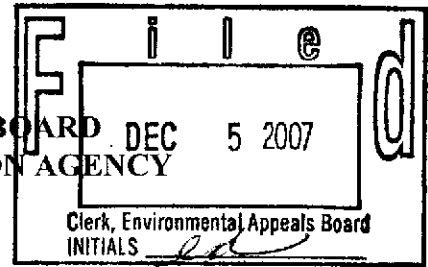


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_)  
In re: )  
)  
City of Keene Wastewater Treatment Facility ) NPDES Appeal No. 07-18  
)  
NPDES Permit No. NH0100790 )  
\_\_\_\_\_)

**ORDER NOTICING PARTIAL WITHDRAWAL OF PERMIT  
AND DISMISSING PORTION OF PETITION FOR REVIEW AS MOOT**

On August 24, 2007, Region 1 of the U.S. Environmental Protection Agency reissued NPDES Permit No. NH0100790 to the City of Keene, New Hampshire. The permit authorizes the Keene Wastewater Treatment Facility to discharge treated wastewater to the Ashuelot River, a tributary of the Connecticut River and a regulated water of the United States, subject to certain effluent limits and conditions. On September 28, 2007, the City of Keene filed a petition for review of Permit No. NH0100790 with the Environmental Appeals Board, pursuant to EPA permitting regulations at 40 C.F.R. § 124.19(a). In its appeal, the City challenged, among other things, new and more stringent effluent limits set forth in the permit for discharges of total recoverable copper, lead, and zinc from the Keene WWTF, measured on maximum daily and average monthly bases.

On November 20, 2007, the Regional Administrator for Region 1 filed a notice with the Board withdrawing the disputed metals limits pursuant to 40 C.F.R. § 124.19(d). The Region intends to prepare new draft permit conditions to replace the withdrawn provisions and will release the new permit conditions for public notice and comment at a future time. In the meantime, the corresponding provisions of the City of Keene's prior NPDES permit (which was originally issued in 1994 and administratively continued in 1999) will remain in effect.


The Region filed a companion motion on November 20, 2007, to partially dismiss the City's petition for review of NPDES Permit No. NH0100790. In its motion, the Region points out that at any time prior to the Board issuing a decision to grant or deny a pending NPDES permit appeal, the Regional Administrator has authority to withdraw part or all of a final permit decision and prepare a new draft permit addressing the portions so withdrawn, provided appropriate prior notice of withdrawal is given. *See* 40 C.F.R. § 124.19(d). In this case, the Region contends that its withdrawal of the disputed metals limits has rendered the City's appeal of those limits moot, and thus requests that the Board dismiss those portions of the pending petition for review.

For good cause shown, the City's appeal of the total recoverable copper, lead, and zinc effluent limits is hereby **DISMISSED WITH PREJUDICE**. This dismissal with prejudice has no effect on the City's right to petition the Board for review of future EPA action with respect to NPDES Permit No. NH0100790 in accordance with 40 C.F.R. § 124.19.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: 12/5/07

By:   
Edward E. Reich  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot** in the matter of *City of Keene Wastewater Treatment Plant*, NPDES Appeal No. 07-18, were sent to the following persons in the manner indicated:

### **By Facsimile and First Class Mail:**

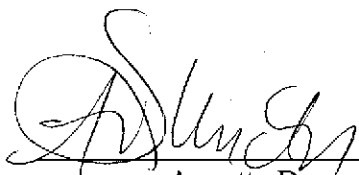
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Date: DEC - 5 2007

  
\_\_\_\_\_  
Annette Duncan  
Secretary