



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

In re:)
))
Springfield Water & Sewer Commission) NPDES Appeal No. 20-07
))
NPDES Permit No. MA0101613)
))
))

**ORDER REQUIRING DOCUMENTS TO BE INCLUDED
IN THE ADMINISTRATIVE RECORD**

In this matter, Springfield Water and Sewer Commission (“Commission”) filed a petition seeking review of a Clean Water Act National Pollutant Discharge Elimination System permit renewal issued by U.S. Environmental Protection Agency Region 1 (“Region”). This case is now fully briefed by the parties, and the Environmental Appeals Board (“Board”) is issuing this Order to address the administrative record.

The contents of an administrative record for any final permit when the U.S. Environmental Protection Agency is the permitting authority are set forth in 40 C.F.R. § 124.18(b). In relevant part, that provision specifies that “[t]he administrative record for any final permit shall consist of the administrative record for the draft permit and * * * [t]he response to comments required by § 124.17 and any new material placed in the record under that section[.]” 40 C.F.R. § 124.18(b)(4). Section 124.17 requires the Region to include “any documents cited in the response to comments” in the administrative record for the final permit. *Id.* § 124.17(b).

The Response to Comments references an EPA guidance document that does not appear in the Certified Index. *See* Office of Water, U.S. EPA, No. 832-B-95-002, *Combined Sewer*

Overflows – Guidance for Long-Term Control Plan G-1 (Aug. 1995), cited in RTC at 52. The Region must include this document, including any appendices or attachments, in the administrative record for this permit proceeding. 40 C.F.R. § 124.17(b).

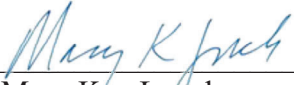
In addition, the Region refers to the Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18,688 (Apr. 19, 1994) (“1994 CSO Control Policy”) in both the Response to Comments and its response to the petition for review. See Region 1, U.S. EPA, *Response to Public Comments on NPDES Permit No. MA0101613* 43, 46, 52, 65, Appx. B at 1 (Sept. 30, 2020) (“RTC”); EPA Region 1’s Response to the Petition for Review (Dec. 11, 2020) (citing the 1994 CSO Control Policy in the Table of Authorities as *passim* to indicate it is referenced throughout the brief). The Region listed the 1994 CSO Control Policy as Exhibit E to the response brief, and cross-referenced that exhibit to administrative record item H.9. However, the Certified Index to the Administrative Record identifies item H.9 as the “National Combined Sewer Overflow Control Strategy,” 54 Fed. Reg. 37,371 (Sept. 8, 1989) (“1989 Strategy”). In 1994, the EPA issued the Combined Sewer Overflow (“CSO”) Control Policy to “elaborate” on the 1989 Strategy and “to expedite compliance” with Clean Water Act requirements because although the 1989 Strategy resulted in progress toward controlling CSOs, “significant water quality risks remain[ed].” 1994 CSO Control Policy § I.A, 59 Fed. Reg. at 18,689. The 1994 CSO Control Policy is not listed in the Certified Index, although it appears the Region may have intended to list it as item H.9. Petitioner cites the 1994 CSO Control Policy in both its petition for review and reply brief. See Petition for Review by Permittee Springfield Water and Sewer Commission, NPDES Appeal No. 20-07, at 30 (Oct. 30, 2020); Springfield Water and Sewer Commission’s Reply in Support of Petition for Review 13, 16 (Jan. 27, 2021).

To ensure that the Board has a complete and accurate Certified Index to the Administrative Record, the Board directs the Region to verify that it contains all required record documents and file an updated Certified Index with all necessary corrections on or before **Wednesday, March 17, 2021**. If the petitioner wishes to file any objection to this order, that objection must be filed with the Board on or before **Friday, March 12, 2021**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: March 5, 2021

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Requiring Documents to be Included in the Administrative Record** in the matter of *Springfield Water & Sewer Commission*, NPDES Appeal No. 20-07, were sent to the following persons in the manner indicated:

By Electronic Mail:

Attorneys for Springfield Water and Sewer Commission

Fredric P. Andes
Erika K. Powers
Ashley E. Parr
Barnes & Thornburg L.L.P.
One North Wacker Drive, Suite 4400
Chicago, IL 60647
(312) 357-1313
Fredric.Andes@btlaw.com
Erika.Powers@btlaw.com
Ashley.Parr@btlaw.com

Attorneys for EPA Region 1

Samir Bukhari
Michael Knapp
Kristen Scherb
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
5 Post Office Square
Boston, MA 02109
(617) 918-1095
(617) 918-1053
(617) 918-1767
bukhari.samir@epa.gov
knapp.michael@epa.gov
scherb.kristen@epa.gov

Attorney for Save the Sound, Inc.

Roger Reynolds
Senior Legal Counsel
Save the Sound, Inc.
900 Chapel Street, Suite 2202
New Haven, CT 06510
(203) 787-0646 Ext. 105
rreynolds@savethesound.org

Pooja Parikh
Peter Ford
U.S. Environmental Protection Agency
Office of General Counsel, Water Law Office
1200 Pennsylvania Avenue, N.W.
Mail Code 2355A
Washington, DC 20460
(202) 564-0839
(202) 564-5593
parikh.pooja@epa.gov
ford.peter@epa.gov

Connecticut River Conservancy Representative

Andrea Donlon, River Steward
Connecticut River Conservancy
15 Bank Row
Greenfield, MA 01301
(413) 772-2020 Ext. 205
adonlon@ctriver.org

*Attorney for Connecticut Department of
Energy and Environmental Protection*

Scott N. Koschwitz
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
scott.koschwitz@ct.gov

Dated: March 5, 2021



Eurika Durr
Clerk of the Board