



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
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BOSTON, MA 02109-3912

VIA ELECTRONIC FILING AND CERTIFIED MAIL

June 12, 2015

Fred Cornaglia
Commissioner, Department of Public Works
City of Taunton
90 Ingell Street
Taunton, MA 02780

Chris J. Gallagher, P.E.
Superintendent, Town of Raynham Sewer Dept.
416 Titicut Road
Raynham, MA 02767

Gregory F. Olsen
Chairman, Dighton Sewer Commission
Town of Dighton Sewer Dept.
P.O. Box 229
North Dighton, MA 02764

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

**RE: City of Taunton Wastewater Treatment Plant
NPDES Permit Appeal No. 15-08; NPDES Permit No. MA0100897**

Dear Messrs. Cornaglia, Gallagher, and Olsen and Ms. Durr:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency ("EPA") is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0100897. EPA reissued that permit to the City of Taunton on April 10, 2015.

The City timely petitioned EPA's Environmental Appeals Board ("EAB") for review of the permit on May 13, 2015. The City contested the: (1) total nitrogen ("TN") effluent limit (May 1-October 31) (Part I.A.1); (2) interim TN effluent limitation (Part I.G.2); (3) requirement to operate nutrient reduction year round (Part I.A.1, n.12-13); (4) TN compliance schedule (Part I.G); (5) copper limitation (Part I.A.1 at 3); (6) flow limitation (Part I.A.1 at 2); and (7) denial of wet weather limits for all water quality-based limits, specifically, flow, CBOD₅, TSS, pH, Total Residual Chlorine, Fecal Coliform, Enterococci, Ammonia Nitrogen, TN, Total Recoverable Copper, DO; and, (8) co-permittee requirements insofar as they can be interpreted to result in the City being jointly and severally liable for any failure by the Towns of Raynham and Dighton to comply with Part 1.B (Unauthorized Discharges) and Part 1.C (Operation and Maintenance of the Sewer System). The City also objected to what it terms EPA's "ongoing regulatory prohibition" on blending, based on Region 2 comments on a recent New Jersey state NPDES permit. These conditions are collectively referred to as the "Contested Conditions."

When a permit appeal is filed, EPA 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. *See* 40 C.F.R. § 124.16(a)(1). Uncontested permit conditions that are "inseverable" from contested conditions are also considered to be contested and are stayed. *See* 40 C.F.R. §§ 124.60(b)(4), 124.16(a)(2)(i). To the extent conditions of the permit are stayed, existing permit holders must comply with the conditions of the existing permit that correspond to the stayed conditions. 40 C.F.R. § 124.16(c)(2). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *See* 40 C.F.R. §§ 124.16(a)(2)(i) and (ii).

EPA is notifying you that the Contested Conditions are stayed pending final agency action. *See* 40 C.F.R. §§ 124.16(a)(1) and 124.19(l). Furthermore, EPA has determined that the other conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable thirty (30) days from receipt of this notice. Specifically, these provisions are comprised of the technology-based limitations set forth in Part I.A.1 (*i.e.*, CBOD₅ and TSS limits, applicable November 1-March 31); Part I.E (Industrial Users and Pretreatment); Part I.F (Combined Sewer Overflows (CSOs)); and Part I.H (Monitoring and Reporting). The Region disagrees with the assertion made by the City in its Petition that the entire Permit should be stayed "given the interdependent relationship of these provisions to all remaining non-contested provisions." Petition at 43. This statement was not accompanied by any analysis or substantiation, and EPA finds no merit in it.¹ The standard under NPDES regulations for placing permit conditions into effect turns on 'severability' not 'interdependence.' Most, if not all conditions of a permit are interdependent in some sense, as they form part of a single, integrated legal instrument.

¹ The City cites *Friends of Pinto Creek v. United States EPA*, 504 F.3d 1007, 1010 (9th Cir. 2007) in support of their request to stay the permit in its entirety. While the permit that was the subject of that appeal was in fact stayed, the decision does not address the circumstances under which a stay of the entire permit, where only a portion of the permit has been appealed, is appropriate under NPDES regulations.

Indeed, under 40 C.F.R. § 124.60(b)(6), conditions that are clearly *interdependent* (*i.e.*, preliminary design and engineering studies; construction activities that would partially meet the final permit conditions, etc.) may still be placed into effect prior to resolution of the appeal. Severability on the other hand is a different concept and defined as capable of being “separable into distinct, independent obligations,” *see Webster New World Dictionary* (3rd College Edition, 1988), which the above conditions identified by the Region clearly are. The decision to place the uncontested portions of the permit into effect without waiting for final resolution of the appeal by the Board is consistent with NPDES regulations, which require the Regional Administrator to provide notification of the uncontested (and severable) conditions “as soon as possible after receiving notification from the EAB of the filing of a petition for review[.]” 40 C.F.R. § 124.16(2)(ii). This spirit of expedition is in keeping with the overall objectives of the Act, and is appropriate under the circumstances here, given the five-year term of the City’s prior permit has long since expired. In light of the foregoing, it would be inappropriate to forestall imposition of uncontested permit requirements that EPA determined to be necessary to comply with the Act during the permit renewal process.

If you have any questions regarding this notice, please contact Samir Bukhari of the Office of Regional Counsel at (617) 918-1095.

Sincerely,



H. Curtis Spalding
Regional Administrator
US EPA-Region 1

cc:

John C. Hall, Esq.
Philip D. Rosenman, Esq.