



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

RECEIVED
U.S. E.P.A.

2009 FEB 19 PM 1:51

VIA CERTIFIED MAIL

ENVIR. APPEALS BOARD

FEB 2 2009

Eurika Durr, Clerk of the Board (MC 1103B)
Environmental Appeals Board
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-001

Jeremia A. Pollard, Esq.
Hannon Lerner
184 Main Street
P.O. Box 697
Lee, Massachusetts 01238

Mr. Robert Nason
Town Administrator
Town of Lee
32 Main Street
Lee, Massachusetts 01238

**Re: Notice of Contested and Uncontested Conditions of NPDES Permit No. MA0100153
Town of Lee Wastewater Treatment Facility
NPDES Appeal No. 08-22**

Dear Ms. Durr, Mr. Pollard, and Mr. Nason:

On October 27, 2008 the Town of Lee, Massachusetts ("Permittee") filed a Petition for Review ("Petition") of NPDES Permit No. MA0100153 ("Permit") with the Environmental Appeals Board ("Board") pursuant to 40 CFR § 124.19(a). The Permit had been reissued to the Permittee on September 23, 2008 by the New England Regional Office of the U.S. Environmental Protection Agency ("Region").

The Permit superseded the permit issued by the Region on September 29, 2000 ("Prior Permit").

In its Petition, the Permittee contests the following limitations and conditions of the Permit:

- (i) the seasonal (April 1st – October 31st) total phosphorus limitation of 0.2 mg/l, found in Part I.A.1 of the Permit;

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

- (ii) the seasonal (November 1st – March 31st) total phosphorus limitation of 1.0 mg/l, found in Part I.A.1 of the Permit; and
- (iii) the date on which the seasonal (November 1st – March 31st) total phosphorus limitation of 1.0 mg/l goes into effect (November 1, 2009), found in Part I.C. of the Permit.

The limitations and conditions contested by the permittee are collectively referred to herein as the "Contested Conditions." Pursuant to 40 C.F.R. §§ 124.16(a)(2)(ii) and 124.60(b), this letter notifies you of my determination that the Contested Conditions are stayed until final agency action under 40 CFR § 124.19(f).

The Permittee also contests the fact that the Permit does not include compliance schedules for the seasonal total phosphorus limitations. However, the absence of a permit condition is not itself a "contested condition" within the meaning of 40 C.F.R. §§ 124.16 and 124.60(b). Moreover, as noted above, the substantive total phosphorus limitations are themselves contested and will remain stayed pending final agency action.

All conditions of the Permit other than the aforementioned Contested Conditions are uncontested and severable from the Contested Conditions. Thus, all of the other conditions are not stayed and will become fully effective enforceable obligations of the Permit thirty days after the date of this notice, pursuant to 40 C.F.R. § 124.16(a)(2)(i). With respect to each of the Contested Conditions, the corresponding term, if any, in the Prior Permit shall remain in effect.

If you have any questions regarding this correspondence, please feel free to contact Ronald Fein, the Region's legal counsel in this matter at 617-918-1040, or Meridith Timony, in the Region's Office of Ecosystem Protection, at 617-918-1533.

Sincerely,



Ira Leighton
Acting Regional Administrator

cc: Paul Hogan, MassDEP
Stephen Perkins, EPA
Roger Janson, EPA
Denny Dart, EPA