

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912



November 14, 2019

**VIA ELECTRONIC FILING**

Eurika Durr  
Clerk of the Board  
U.S. EPA Environmental Appeals Board  
1200 Pennsylvania Avenue, NW (Mail Code 1103M)  
Washington, D.C. 20460-0001

**RE: City of Haverhill  
NPDES Permit No. MA0101621; NPDES Appeal No. 19-04**

Dear Ms. Durr:

Please find a Joint Motion to Stay the Proceedings in connection with *In re City of Haverhill*, NPDES Appeal No. 19-04.

If you have any questions regarding this filing, please contact Samir Bukhari of the Office of Regional Counsel at 617.918.1095, or Matthew J. Connolly of Nutter McClellan & Fish, LLP, counsel for petitioner, at 617.439.2150.

Sincerely,

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Samir Bukhari  
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cc: Lealdon Langley, MassDEP

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

	)	
In the Matter of:	)	
	)	
City of Haverhill	)	
	)	NPDES Appeal No. 19-04
	)	
NPDES Permit No. MA0101621	)	
	)	

**JOINT MOTION TO STAY THE PROCEEDINGS**

Pursuant to 40 C.F.R. § 124.19(f), Region 1 of the United States Environmental Protection Agency (“EPA”) and the City of Haverhill (“Haverhill”) hereby move the Environmental Appeals Board (“Board”) to stay the proceedings in this matter to provide the parties with an opportunity to pursue a negotiated resolution of some or all of the issues in dispute. The grounds for this motion are as follows:

1. On September 25, 2019, EPA issued a National Pollutant Discharge Elimination System Permit (“NPDES”) to Haverhill, authorizing discharges from Haverhill’s wastewater treatment facility and from thirteen Combined Sewer Overflow outfalls to the Merrimack River, in Massachusetts.
2. On October 25, 2019, Haverhill timely filed a Petition for Review (“Petition”) with the Board requesting review of certain conditions of the permit. Specifically, Haverhill challenged the effluent limitation for Total Residual Chlorine (“TRC”); the calculation of the critical low flow used to derive the dilution-based TRC limit; and the 45-minute chlorine holding time requirement.

3. Under 40 C.F.R. § 124.19(b)(2), EPA's response to the Petition, along with a certified index and relevant portions of the administrative record, is due within 30 days after service of the Petition, or November 27, 2019.
4. Counsel for the parties have conferred and have decided to initiate a discussion to ascertain whether a negotiated resolution of the issues raised in the Petition is possible. Should the parties settle their differences, in whole or in part, the need for EPA and municipal petitioners to direct resources toward litigation-related activity would be minimized, an outcome that would conserve the resources of the parties as well as the Board.
5. Haverhill's counsel also represents a petitioner in another pending Board appeal, *In re Greater Lawrence Sanitary District*, NPDES Appeal No. 19-05 (filed 10/25/19). The two petitions involve overlapping legal and factual claims. EPA and petitioners have today filed a separate stay motion to accommodate settlement discussions in that case as well. Given the posture of the two cases, EPA and petitioners are presented with an opportunity to efficiently, and consistently, address issues common to both petitions.
6. Due to the technical nature of issues raised in the Petition, EPA and Haverhill have determined that it will be appropriate to convene both legal and technical personnel in any settlement discussion. Preparing and scheduling these meetings may prove challenging, given the number of individuals required, and in light of preexisting commitments and travel plans around the holidays.
7. To allow settlement discussions to unfold in an orderly manner, while at the same time ensuring matters on the Board's docket are expeditiously resolved, the parties request the following:

- a. A 60-day stay of the proceedings that holds the filing deadline for the EPA's response to petition in abeyance, such that parties' full attention may be directed toward the technically-complex subject matter that will be at issue in settlement discussions, rather than to litigation before the Board.
- b. An order directing the parties to file status reports at 30-day intervals, with the first report due upon the end of the initial 60-day stay. In the status report, the parties will report on the progress of negotiations, which will include a discussion of whether it is appropriate to continue the stay, dismiss the Petition, or lift the stay and establish a schedule for EPA to file a response to the Petition within 30 days.

For the reasons set forth above, and in the interest of conserving judicial resources and promoting efficiency, the parties respectfully request that the Board grant this Joint Motion to Stay the Proceedings.

Dated: November 14, 2019

Respectfully submitted,

U.S. EPA – Region 1

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City of Haverhill

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion to Stay the Proceedings, in connection with *In re City of Haverhill*, NPDES Appeal No. 19-04, was sent to the following persons in the manner indicated:

By Electronic Filing:

Eurika Durr  
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Dated: November 14, 2019

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