



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

5 Post Office Square Suite 100  
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OFFICE OF THE  
REGIONAL ADMINISTRATOR

*Dated by electronic signature*

**VIA ELECTRONIC FILING**

Emilio Cortes  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3332  
Washington, DC 20004

Peter C. Nourse, P.E.  
Director of City Services  
209 Chestnut Hill Rd.  
Rochester, NH 03867  
(603) 332-4096  
peter.nourse@rochesternh.gov

**RE: City of Rochester  
NPDES Permit No. NH0100668; NPDES Appeal No. 23-01**

Dear Mr. Cortes and Mr. Nourse:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency (“the Region”) is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0100668, issued by the Region to the City of Rochester, New Hampshire (“Rochester”) on March 20, 2023 (“2023 Permit”). When effective, the 2023 Permit will supersede Rochester’s previous permit, which has been administratively-continued since its expiration in July 2002 (“1997 Permit”).

On April 19, 2023, Rochester timely filed a Petition for Review of the 2023 Permit. Rochester contested:

1. The Total Phosphorus effluent limitations (Permit Part I.A.1, pg. 2-3);
2. The Ammonia Nitrogen effluent limitations (Permit Part I.A.1, pg. 2);
3. The Maximum Daily CBOD effluent limitations (Permit Part I.A.1, pg. 2);
4. The pH Range requirement (Permit Part I.A.1, pg. 2);
5. The Whole Effluent Toxicity (“WET”) Testing requirement (Permit Part I.A.1, pg. 3);
6. The Permit’s requirement that “The discharge shall not cause a violation of the water quality standards of the receiving water.” (Permit Part I.A.2, pg. 8);

7. The Influent Characteristic and Sludge Characteristic monitoring and reporting requirements for PFAS Analytes (Permit Part I.A.1, pg. 4);
8. Requirements set forth in Permit Part I.A.9 (identification of discharges from Significant Industrial Users) (Permit Part I.A.9, Pg. 9);
9. Requirements set forth in Permit Part I.B.2 (public notification for unauthorized discharges) (Permit Part I.B.2, pg. 9);
10. Operations & Maintenance of the Sewer System (“O&M”), Maintenance Staff requirement (Permit Part I.C.1, Pg. 9);
11. O&M, Preventative Maintenance Program requirement (Permit Part I.C.2, Pg. 9);
12. O&M, Infiltration/Inflow requirement<sup>1</sup> (Permit Part I.C.3, pg. 10);
13. O&M, Collection System Mapping requirement (Permit Part I.C.4, pg. 10);
14. O&M, Collection System O&M Plan requirement (Permit Part I.C.5, pg. 11);
15. O&M, Annual Reporting Requirement (Permit Part I.C.6, pg. 12);
16. Alternate Power Source requirement (Permit Part I.D, pg. 12);
17. Industrial Users and Pretreatment Program requirements set forth in Permit Part I.E.1 (Permit Part I.E.1, pg. 13); and
18. Industrial Users and Pretreatment Program requirements set forth in Permit Part I.E.6 (Permit Part I.E.6, pg. 14).

See Petition for Review at 8, 9-15, 15, 16-17, 17-18, 16, 18-20, 20, 20-21. 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 an appeal is pending, contested permit conditions are stayed. *Id.* at § 124.16(a)(1). Uncontested permit conditions that are “inseverable” from contested conditions are also considered to be contested and are stayed. *Id.* at §§ 124.60(b)(4), 124.16(a)(2)(i). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *Id.* at §§ 124.16(a)(2)(i) and (ii).

The Region is notifying you that the Contested Conditions are stayed pending final agency action. The stay operates in accordance with EPA regulations. As the holder of an existing, administratively-continued permit, Rochester must continue to comply with conditions of that permit that correspond to the stayed conditions. *Id.* at § 124.16(c)(2). As such:

1. The Total Phosphorus effluent limitations in the 2023 Permit are stayed. There are no corresponding limitations in the 1997 Permit with which permittee must comply.
2. The Ammonia Nitrogen effluent limitations in the 2023 Permit revert to the Total Ammonia as NH<sub>3</sub> limits on pages 6 and 7 of the 1997 Permit.
3. The Maximum Daily CBOD effluent limitations in the 2023 Permit revert to the identical Maximum Daily CBOD limits in Part I.A of the 1997 Permit.
4. The pH range in the 2023 Permit reverts to the identical pH range in Part I.G.1.a of the 1997 Permit.
5. The WET Testing requirements in the 2023 Permit, including the LC<sub>50</sub> limit, C-NOEC limit and all effluent and ambient reporting requirements associated with the WET tests, are stayed. The Permittee must comply with the corresponding LC<sub>50</sub> and C-NOEC requirements described on pages 6, 7 and 9 in the 1997 Permit.

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<sup>1</sup> In addition to Permit Part I.C.3, the Petition challenges “Part 5.6” which the Region believes refers to Fact Sheet Part 5.6 (Infiltration/Inflow). The Region interprets that challenge to be to the Infiltration/Inflow Permit provision, Permit Part I.C.3.

6. The 2023 Permit's requirement that "The discharge shall not cause a violation of the water quality standards of the receiving water[s]" reverts to the identical requirement in Part I.A.3.a of the 1997 Permit.
7. The PFAS analytes monitoring and reporting requirements in the 2023 Permit are stayed. There are no corresponding requirements in the 1997 Permit with which the Permittee must comply.
8. The challenged Industrial Users requirements set forth in Parts I.A.9, I.E.1, and I.E.6 of the 2023 Permit are stayed. The Permittee must comply with any corresponding requirements in Parts I.B and I.C of the 1997 Permit.
9. The unauthorized discharge public notification requirements set forth in Part I.B.2 of the 2023 Permit are stayed. The Permittee must comply with any corresponding requirements set forth in Parts II.B.4.c and II.D.1.e of the 1997 Permit.
10. The challenged Operation and Maintenance requirements set forth in Parts I.C.1, I.C.2, I.C.3, I.C.4, I.C.5, and I.C.6 of the 2023 Permit are stayed. The Permittee must comply with any corresponding requirements in Part II.B. of the 1997 Permit.
11. The Additional Power Source requirement set forth in Part I.D of the 2023 Permit is stayed. The Permittee must comply with any corresponding requirement in Part II.B.1 of the 1997 Permit.

EPA has determined that all other conditions of the 2023 Permit are uncontested and severable, and accordingly will become fully effective and enforceable on July 1, 2023.

If you have any questions regarding this notice, please contact Kristen Scherb (617) 918-1767 of the Office of Regional Counsel.

Sincerely,

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David Cash  
Regional Administrator  
US EPA-Region 1

cc:

Sherilyn Burnett Young, Esq., Attorney for Rochester  
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