



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

November 1, 2010

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

Joseph A. Jordan, Deputy Commissioner of Wastewater  
City of Fitchburg Wastewater Treatment Facilities Commission  
718 Main Street  
Fitchburg, MA 01420

David E. Evans, Esq.  
McGuireWoods LLP  
One James Center  
Richmond, VA 23219

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ENVIR. APPEALS BOARD

**Re: Notice of Contested and Uncontested Conditions of NPDES Permit No. MA0100986  
Fitchburg East Wastewater Treatment Facility  
NPDES Appeal No. 10-14**

Dear Ms. Durr, Mr. Jordan, and Mr. Evans:

On August 26, 2010 the City of Fitchburg (Massachusetts) Wastewater Treatment Facilities Commission (“Permittee”) filed a Petition for Review (“Petition”) of NPDES Permit No. MA0100986 (“Permit”) with the Environmental Appeals Board (“Board”) pursuant to 40 C.F.R. § 124.19(a). The Permit had been reissued to the Permittee on July 22, 2010 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 The Permit superseded the permit issued by the Region on September 13, 2002 (“Prior Permit”).

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

1. The seasonal (April 1-October 31)<sup>1</sup> total phosphorus concentration-based limit of 0.2 mg/l, found in Part I.A.1 of the Permit, at page 3; and

<sup>1</sup> The Permit’s challenged seasonal phosphorus limits extend from April 1-October 31. However, the Petition states only that it is challenging the phosphorus limits applicable during the period April 1-October 1. For the limited purpose of this notice of contested and uncontested conditions, and without waiving any available arguments in response to the Petition, the Region deems the seasonal phosphorus limits to be stayed for the period October 2-31 as well.

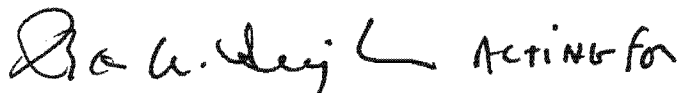
2. The seasonal (April 1-October 31) total phosphorus mass-based limit of 20.7 lb/day, found in Part I.A.1 of the Permit, at page 3.

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 C.F.R. § 124.19(f). With respect to each of the Contested Conditions, the corresponding term in the Prior Permit, if any, shall remain in effect pending resolution of Board proceedings.

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) and 124.60(b)(5).

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 Susan Murphy, in the Region's Office of Ecosystem Protection, at 617-918-1534.

Sincerely,

 ACTING FOR

H. Curtis Spalding  
Regional Administrator

cc: Glenn Haas, MassDEP  
Elizabeth Ainsley Campbell, Nashua River Watershed Association  
Jeffrey Blake, Esq., Kopelman and Paige, P.C.  
Joshua Hall, Town of Westminster Department of Public Works  
Stephen Perkins, EPA  
Damien Houlihan, EPA  
Denny Dart, EPA