



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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

September 28, 2005

VIA ELECTRONIC AND EXPRESS MAIL

U.S. Environmental Protection Agency
Ms. Eurika Durr, Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

**Re: Status Report and Joint Motion to Extend Stay of the Proceedings
Town of Belchertown, Massachusetts, Belchertown Water Reclamation Facility
NPDES Appeal No. 05-10
NPDES Permit No. MA0102148**

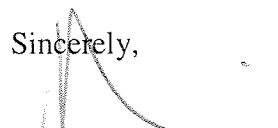
Dear Ms. Durr:

In response to the Environmental Appeals Board Order Granting Joint Motion for Stay of Proceedings, dated August 9, 2005, enclosed please find a:

- (i) Status Report and Joint Motion to Extend Stay of the Proceedings in connection with NPDES Appeal No. 05-10, and
- (ii) Notice of Uncontested and Severable Conditions.

Please file this motion in your usual manner. If you should have any questions, please do not hesitate to contact me at 617-918-1095.

Sincerely,


Samir Bukhari
Attorney Advisor
Office of Regional Counsel
US EPA-Region 1

Enclosures

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response by August 29, 2005 to address whether the Petitioner satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a).

On August 5, 2005, the Region and the Town filed a Joint Motion for Stay of the Proceedings (“Joint Motion”). In the motion, the Parties reported that they had entered into settlement negotiations and, accordingly, requested a stay of the proceedings before the Board until September 30, 2005.

The Board granted the Joint Motion on August 9, 2005 and instructed the Parties to provide the Board with a report on the status of settlement negotiations and to suggest a future course of action by September 30, 2005.

STATUS REPORT AND GROUNDS FOR EXTENSION OF STAY

By letter dated September 28, 2005, the Region notified the EAB and the Permittee of its determination that the Contested Limits would be stayed pending final agency action, as provided by 40 C.F.R. §§ 124.16(a) and 124.60(b) (“Notice”). The Region further determined that all other conditions of the Permit were uncontested and severable under 40 C.F.R. §124.16(a)(2)(ii) and that such conditions would become fully effective enforceable obligations of the Permit thirty days from the date of the Notice. With respect to each of the Contested Limits, the corresponding limit, if any, in the Prior Permit would remain in effect.

In the Notice, the Region also informed the EAB and the Permittee of the Region’s withdrawal of the contested flow limit and mass loading limits pursuant to 40 C.F.R. § 124.19(d). The Region noted that the corresponding flow limit in the Prior Permit would remain in effect (the Prior Permit does not contain mass limits).

To address the withdrawn limits, the Region will issue for public comment a draft permit modification which uses a monthly average to measure compliance with the flow limit rather than the twelve month rolling average currently in the Permit. A monthly averaging period was the compliance measurement used in the Prior Permit. The shift to a twelve month rolling average was in response to a Massachusetts Department of Environmental Protection memorandum released in June 12, 2000 (“MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrients in NPDES Permits.”). In order to ensure that the change in averaging periods did not result in increased overall pollutant loadings to the receiving waters in violation of applicable anti-degradation provisions of the Massachusetts Water Quality Standards, the Region imposed weekly and monthly mass limits for TSS, BOD₅ and phosphorus in the Permit. After reviewing the facts and circumstances of this case, the Region has concluded that the return to the monthly average flow regime used in the Prior Permit is sufficient justification to remove the contested mass limits from the Permit. The DEP concurs with this determination. The proposed modification is sufficient to address the Town’s objections to the Permit. The Town has informed the Region that upon successful completion of the contemplated modification proceedings, the Town will (i) withdraw its Petition in its entirety and (ii) join the Region in motioning the Board to dismiss the Petition.

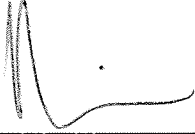
The draft permit modification will be issued as soon as possible after the Permit goes into effect in accordance with the Notice. The modification will proceed through the same process of public comment and opportunity for a public hearing as would apply to any other permit modification subject to 40 C.F.R. Part 124. Following public notice and comment, which the Region expects to conclude on or around November 15, 2005, the Region will finalize the permit

modification unless public comment raises significant issues that lead the Region to reconsider the modification. The Region expects to be able to complete the permit modification process no later than January 15, 2006, a date which includes the thirty day period in which a petition for review of the modified permit may be filed with the EAB. By or as soon as practicable before that date, the Parties will submit a status report regarding the permit modification and whether it is appropriate to continue the stay, dismiss the Petition, or establish a schedule for EPA's response to the Petition.

REQUESTED RELIEF

Accordingly, the Parties request that this matter be stayed to allow the Parties to resolve the issue through the permit modification process. To do otherwise would require the Parties to divert their time and effort to the proceeding before this Board, when there is a substantial likelihood that the issue raised in the Petition will be addressed through permit modification. Therefore, in an effort to conserve resources and to encourage efficiency and promote judicial economy, the Parties jointly request that these proceedings be stayed until January 15, 2006.

Respectfully submitted,



U.S. Environmental Protection Agency,
New England Region

By its Attorney,
Samir Bukhari
Attorney Advisor
U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1095
Fax 617-918-0095

Town of Belchertown
One South Main Street, P.O. Box 670
Belchertown, MA 01007-0670

Dated: September 28, 2005



Town of Belchertown

By its Town Administrator,
Gary Brougham
One South Main Street, P.O. Box 670
Belchertown, MA 01007-0670
413-323-0403
Fax 413-323-0494

Dated: September 27, 2005



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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

SEP 28 2005

OFFICE OF THE
REGIONAL ADMINISTRATOR

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U.S. Environmental Protection Agency
Environmental Appeals Board
Eurika Durr, Clerk of the Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Mr. Gary Brougham, Town Administrator
Town of Belchertown
One South Main Street, P.O. Box 670
Belchertown, MA 01007-0670

Steven J. Williams, Director
Town of Belchertown, Department of Public Works
290 Jackson Street, P.O. Box 670
Belchertown, MA 01007-0670

**Re: Notice of Uncontested and Severable Conditions and Withdrawal of Certain
Contested Conditions of NPDES Permit MA0102148**

Dear Ms. Durr and Mssrs. Brougham and Williams:

By letter dated July 8, 2005, the Town of Belchertown ("Town") filed, pursuant to 40 C.F.R. § 124.19(a), a Petition for Review ("Petition") of NPDES permit MA0102148 ("Permit") with the Environmental Appeals Board ("Board"). The Permit had been reissued to the Town on June 10, 2005 by the New England Regional Office of the U.S. Environmental Protection Agency ("Region"). The Permit superseded the permit issued by the Region on July 11, 1997 ("Prior Permit").

Uncontested and Severable Conditions

The Town's Petition contests, (i) the flow limit, (ii) the mass loading limits (BOD₅, TSS and phosphorus), (iii) the copper limit and (iv) the Whole Effluent Toxicity limit of the Permit (collectively, "Contested Limits"). Pursuant to 40 C.F.R. § 124.16(a)(2)(ii), this letter notifies you of my determination that the Contested Limits are stayed during the pendency of this appeal. All other conditions of the Permit are uncontested and severable from the contested permit terms. Thus, all of the other conditions are not stayed and will become fully effective enforceable

obligations of the Permit thirty days from the date of this notice, as provided by 40 C.F.R. §124.16(a)(2)(i). With respect to each of the Contested Limits, the corresponding limit, if any, in the Prior Permit shall remain in effect.

Withdrawal of Certain Contested Conditions

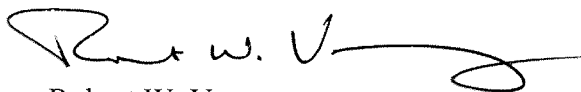
The Region hereby withdraws the above-referenced flow limit and mass loading limits pursuant to 40 C.F.R. § 124.19(d) ("Withdrawn Limits"). The corresponding flow limit in the Prior Permit shall remain in effect (the Prior Permit does not contain mass limits). Those portions of the Permit that are not withdrawn shall continue to remain in effect.

To address the Withdrawn Limits, the Region will issue for public comment a draft permit modification which uses a monthly average to measure compliance with the flow limit rather than the twelve month rolling average currently in the Permit. A monthly averaging period was the compliance measurement used in the Prior Permit. The shift to a twelve month rolling average in the Permit was in response to a Massachusetts Department of Environmental Protection memorandum released in June 12, 2000 ("MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrients in NPDES Permits"). In order to ensure that the change in averaging periods did not result in increased overall pollutant loadings to the receiving waters in violation of applicable anti-degradation provisions of the Massachusetts Water Quality Standards, the Region imposed weekly and monthly mass limits for TSS, BOD₅ and phosphorus. The Region has concluded that, based on the facts and circumstances of this case, the return to the monthly average flow regime used in the Prior Permit is sufficient justification to remove the contested mass limits from the Permit. The Massachusetts DEP concurs with this determination. The proposed modification is sufficient to address the Town's objections to the Permit. The Town has informed the Region that upon successful completion of the contemplated modification proceedings, the Town will (i) withdraw its Petition in its entirety and (ii) join the Region in motioning the Board to dismiss the Petition.

The draft permit modification will proceed through the same process of public comment and opportunity for a public hearing as would apply to any other permit modification subject to 40 C.F.R. Part 124.

If you have any questions regarding this correspondence, please feel free to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or David Pincumbe, in our Office of Ecosystem Protection, at 617-918-1695.

Sincerely,



Robert W. Varney
Regional Administrator

cc:

Glenn Haas, Director, Division of Watershed Management, MA DEP

Paul Hogan, Surface Water Permit Program, MA DEP

Linda Murphy, EPA

Roger Janson, EPA

Brian Pitt, EPA

David Pincumbe, EPA

Victor Alvarez, EPA

Steve Sweeney, EPA

Carl Dierker, EPA

Ann Williams, EPA