



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

November 7, 2019

VIA ELECTRONIC FILING AND U.S. MAIL

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

Mark Young
Executive Director
Lowell Regional Wastewater Utility
City of Lowell
451 First Street Blvd (Rte-110)
Lowell, MA 01850

F. Paul Calamita
Richard H. Sedgley
AquaLaw PLC
6 South 5th Street
Richmond, Virginia 23219

RE: City of Lowell
NPDES Permit No. MA0100633; NPDES Appeal No. 19-03

Dear Sir or Madam:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency ("EPA") is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0100447. EPA reissued that permit to the City of Lowell (the "City") on September 25, 2019.

The City timely petitioned EPA's Environmental Appeals Board ("EAB") for review of the permit on October 24, 2019. The City contested:

1. The total phosphorous monthly average limit in the "summer" from April 1 through October 31 each year (Permit at Section I.A.1);
2. The effluent flow limit (Permit at Section I.A.1);
3. The *E. coli* daily maximum limit (Permit at Section I.A.1);
4. The quarterly whole effluent toxicity (WET) testing (Permit at Section I.A.1);
5. The quarterly testing for metals, including: aluminum, cadmium, copper, nickel, lead and zinc (Permit at Section I.A.1);
6. The provisions addressing the bypass of secondary treatment (Petitioner requests that Section II.B.4 be removed as a result of its challenge to the bypass provisions (p.26). In the summary of its claims (p.2) it also cites to Section I.A.1, footnotes 5, 13, and 15 in connection with this claim. These latter provisions, however, are unconnected to the bypass provisions of the permit contained at Section II.B.4. Petitioner does not later explain its citation to these unrelated provisions of the permit or provide a basis for challenging them. Accordingly, EPA understands its challenge to the bypass provisions to implicate Section II.B.4 only.);
7. The requirement that discharges shall not cause a violation of the water quality standards of the receiving water. (Permit at Section I.A.2).
8. The requirement that CSO discharges shall not cause or contribute to violations of federal or state Water Quality Standards (Permit at Section I.F.2b.); and,
9. The requirement to develop a routine sampling program in which samples are taken at the same time and days of the week each month, when occasional deviations from the routine sampling plan are allowed, but that the reasons for such deviation shall be documented (Permit at Section I.A.1, footnote 1) and the requirements that WET samples shall be collected, and WET tests completed, during the same weeks in January, April, July and October (Permit at Section I.A.1, footnote 13).

See Petition for Review at 2. 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 a permit appeal is pending, the 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).

EPA is notifying you that the Contested Conditions are stayed pending final agency action. *Id.* at § 124.16(a)(1). EPA has further concluded that the compliance schedule associated with the contested phosphorus limit, set forth at Section I.H.1, is inseverable from that limit. As the holder of an existing, administratively-continued permit, the City must continue to comply with conditions of that permit that correspond to the stayed conditions. *Id.* at § 124.16(c)(2). EPA has determined that all other

conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable on January 1, 2020.

If you have any questions regarding this notice, please contact Michael Knapp (617.918.1053) or Cayleigh Eckhart (617.918.1044) of the Office of Regional Counsel.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis Deziel", written over a horizontal line.

Dennis Deziel
Regional Administrator
US EPA-Region 1

cc: Lealdon Langley, MassDEP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Uncontested and Severable Conditions, in the matter of City of Lowell, NPDES Appeal No. 19-03, was served on the following persons in the manner indicated:

By 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

By U.S. Mail:

F. Paul Calamita
Richard H. Sedgley
AquaLaw PLC
6 South 5th Street
Richmond, Virginia 23219


Town of Chelmsford Department of Public Works
Sewer Division
9 Alpha Road
Chelmsford, MA 01824

Town of Dracut Sewer Department
62 Arlington Road
Dracut, MA 01826

Town of Tewksbury
Department of Public Works
Water and Sewer Division
1009 Main Street
Tewksbury, MA 01876

Town of Tyngsborough
Town Hall
25 Bryants Lane
Tyngsborough, MA 01879

Dated: November 8, 2019



Samir Bukhari