

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912



**VIA ELECTRONIC FILING AND CERTIFIED MAIL**

**AUG 24 2018**

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

Ms. Clary Coutu  
Keolis Commuter Services, LLC  
470 Atlantic Avenue – 5<sup>th</sup> Floor  
Boston, MA 02210

Thomas Joyce  
Assistant Manager of Facilities and Engineering  
c/o Delaware North Corporation  
100 Legends Way  
Boston, MA 02114

Andrew D. Brennan  
Director of Environmental Affairs  
Massachusetts Bay Transportation Authority  
10 Park Plaza  
Boston, MA 02116-3974

**RE: Massachusetts Bay Transportation Authority, Keolis Commuter Services, LLC, and Delaware North Corporation; NPDES Permit No. MA0028941 (North Station Railroad Terminal); NPDES Appeal No. 18-03**

Dear Ms. Coutu, Mr. Joyce and Mr. Brennan:

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 of National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0028941 issued to the Massachusetts Bay Transportation Authority (“MBTA”), Keolis Commuter Services, LLC (“Keolis”), and Delaware North Corporation (“DNC”) on June 15, 2018.

Keolis petitioned EPA's Environmental Appeals Board ("EAB") for review of the permit on July 18, 2018. The MBTA and DNC did not petition the EAB for review. Keolis challenged a single condition of the Permit. In particular, the challenged condition requires the Permittees, as part of a Stormwater Pollution Prevention Plan ("SWPPP"), to "inspect and maintain the absorbent pads for track areas where locomotives stop (to capture incidental drips of oil from the trains) and the oil/water separator, both on a weekly basis." Permit, Part I.B.9 (referred to as the "Contested Condition").

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. 40 C.F.R. § 124.16(a)(2)(i), (ii). While a permit appeal is pending, the contested permit conditions are stayed. *Id.* § 124.16(a)(1). Uncontested permit conditions that are inseverable from contested conditions are also considered to be contested and are stayed. *Id.* §§ 124.16(a)(2)(i), 124.60(b)(4). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *Id.* § 124.16(a)(2)(i), (ii). To the extent that conditions of the new permit are stayed, a permittee must comply with those conditions of its previous permit (issued April 7, 2010) that correspond to the stayed conditions, *id.* § 124.16(c)(2), including the condition of the previous permit requiring inspection and maintenance of the absorbent pads for track areas where locomotives stop (to capture incidental drips of oil from the trains) and the oil/water separator on a monthly basis.

EPA is notifying you that the Contested Condition is stayed pending final agency action. *Id.* §§ 124.16(a)(1), 124.19(l). EPA has determined that all other conditions of the permit are uncontested and severable, and accordingly are fully effective and enforceable as of October 1, 2018.

If you have any questions regarding this notice, please contact Joshua Secunda of the Office of Regional Counsel at (617) 918-1736.

Sincerely,



Alexandra Dapolito Dunn  
Regional Administrator  
US EPA-Region 1

cc: Eric L. Klein, Beveridge & Diamond, P.C., Counsel for Keolis Commuter Services, LLC  
Susannah King, Massachusetts Department of Environmental Protection  
Damien Houlihan, EPA  
Diane Boisclair, EPA