



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

VIA ELECTRONIC FILING AND U.S. MAIL

February 28, 2013

Stephen Fournier, Town Administrator
Town of Newmarket
186 Main Street
Newmarket, NH 03857

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

**RE: Town of Newmarket Wastewater Treatment Plant
NPDES Permit No. NH0100196; NPDES Appeal No. 12-05**

Dear Ms. Durr and Mr. Fournier:

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. NH0100196. EPA reissued that permit to the Town of Newmarket, New Hampshire, on November 16, 2012.

The Great Bay Municipal Coalition, representing the Cities of Dover and Rochester, timely petitioned EPA's Environmental Appeals Board (EAB) for review of the permit on December 14, 2012. In its Petition, the Coalition contested a single condition of the permit, the total nitrogen limitation of 3.0 mg/L set forth in Part I.A.1 of the permit.

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. *See* 40 C.F.R. § 124.16(a)(1). Uncontested permit conditions that are "inseverable" from contested conditions are also considered to be contested and are stayed. *See* 40 C.F.R. §§ 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. *See* 40 C.F.R. §§ 124.16(a)(2)(i) and (ii). When a discharger proposes a less stringent level of treatment than that contained in the final permit, uncontested conditions include "any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party." *See* 40 C.F.R. § 124.60(b)(6)(iii).

EPA is notifying you that the permit's total nitrogen limit of 3.0 mg/L is stayed for the pendency of NPDES Appeal No. 12-05 before the EAB. EPA has determined that all other conditions of the permit are uncontested, and accordingly will become fully effective and enforceable thirty (30) days from receipt of this notice. Additionally, EPA has determined that the permit condition limiting total nitrogen, adjusted to a level of 8.0 mg/L reflecting the less stringent level of treatment proposed by the Town of Newmarket, is uncontested within the meaning of 40 C.F.R. § 124.60(b)(6)(iii). The nitrogen limit is effective from April 1 - October 31 of each year and is applied on a seasonal average basis. That limit will also become fully effective and enforceable thirty (30) days from receipt of this notice. This determination is based on the Town's proposal for a less stringent limit during the public comment period. *See* Letter from Town of Newmarket, Department of Public Works, to Dan Arsenault, US EPA, dated December 13, 2011 ("The Town of Newmarket requests that EPA and NHDES revisit their draft permit limit of 3 mg/L total nitrogen to allow an 8 mg/L total nitrogen limit as a seasonal average."). The Town has reaffirmed its commitment to this proposal and expressly concurs with EPA's decision to deem this limit uncontested. *See* Attachment A.

If you have any questions regarding this notice, please contact Samir Bukhari of the Office of Regional Counsel at (617) 918-1095.

Sincerely,



H. Curtis Spalding
Regional Administrator
US Environmental Protection Agency

cc: Harry Stewart, NHDES
Stergios Spanos, NHDES
John Hall, Great Bay Municipal Coalition
Thomas J. Jean, City of Rochester
Dean Trefethen, City of Dover

DEVINE
MILLIMET

ATTORNEYS AT LAW

February 7, 2013

GEORGE DANA BISBEE
T 603.695.8626
F 603.669.8547
DBISBEE@DEVINEMILLIMET.COM

Stephen Perkins
EPA New England, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: Town of Newmarket NPDES Permit No. NH0100196

Dear Mr. Perkins:

I write on behalf of my firm's client, the Town of Newmarket, to confirm the Town's position with respect to its plans to move forward with the design and construction of a new municipal wastewater treatment facility. After receipt of the Final NPDES Permit on November 16, 2012, the Town reached the decision that it would not contest any of the conditions of the permit, and it subsequently did not file an appeal with the Environmental Appeals Board. Consequently, the Town has accepted the nitrogen limit of 3 mg/l during the seven month season of April through October.

As part of this decision, the Town has negotiated with your agency an Administrative Order on Consent ("AOC") providing for, among other components, an interim permit limit of 8 mg/l (as it had proposed in the past, including in the 2011 Memorandum of Agreement between NH Department of Environmental Services and the Great Bay Municipal Coalition) with a compliance schedule of up to fifteen years to reach the 3 mg/l. The Town also has committed to various non-point source reduction activities, as part of the negotiated AOC.

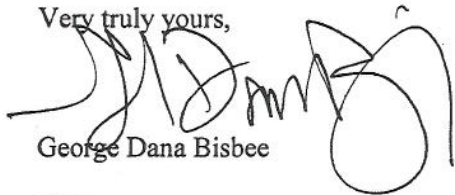
This will confirm that the Town has (1) accepted the final permit for nitrogen of 3 mg/l; (2) proposed and negotiated with your agency an interim permit limit of 8 mg/l, (3) proposed this less stringent nitrogen limit of 8 mg/l as provided for in 40 CFR § 124.60(b)(6)(iii), and (4) begun to take steps necessary to comply with the terms that have been negotiated for the AOC, starting with steps to obtain Town Meeting approval to fund the design and construction of a new treatment plant to achieve the interim limit of 8 mg/l. This latter commitment will substantially reduce nitrogen loadings into the Lamprey River and the Great Bay Estuary. Also, the new treatment plant will be

ATTACHMENT A

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designed and constructed to be consistent with the additional treatment that may be required if and when a lower permit limit for nitrogen becomes effective and is imposed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. Dana Bisbee', written over a large, stylized circular flourish.

George Dana Bisbee

GDB:aec

cc: Carl Deloi, EPA
Samir Bukhari, EPA
Michael Wagner, EPA
Steve Fournier, Town of Newmarket
Sean Greig, Town of Newmarket