



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

Dated by electronic signature

VIA ELECTRONIC FILING

Emilio Cortes
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3332
Washington, DC 20004

Kurt Blomquist, Director
Public Works and Emergency Management, City Hall
3 Washington Street
Keene, NH 03431
kblomquist@ci.keene.nh.us

RE: City of Keene
NPDES Permit No. NH0100790; NPDES Appeal No. 21-03

Dear Mr. Cortes and Mr. Blomquist:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency (“the Region”) is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0100790, issued by the Region to the City of Keene (“Keene”) on September 14, 2021 (“2021 Permit”). When effective, the 2021 Permit will supersede Keene’s previous permit, which has been administratively-continued since its expiration in August 2012.

On September 24, 2021, Keene filed a Notice of Appeal and Unopposed Motion for Extension of Time to File Appeal Brief. In compliance with the Environmental Appeals Board’s September 27, 2021 Order Granting Extension of Time for Filing Brief in Support of Petition for Review, Keene filed its brief on November 15, 2021. Keene contested:

1. The pH effluent limit (Permit at Part I.A.1, pg. 3);
2. The Total Recoverable Aluminum effluent limit (Permit at Part I.A.1, pg. 3);
3. The absence of a special condition authorizing a site-specific criteria evaluation and a permit modification of the Total Recoverable Aluminum effluent limit based on finalization, if any, of such criteria; and

4. The absence of a special condition authorizing a site-specific criteria evaluation and a permit modification of the Total Recoverable Copper effluent limit based on finalization, if any, of such criteria.¹

See Petition for Review at 3-4. 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 an appeal is pending, 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).

The Region is notifying you that the Contested Conditions are stayed pending final agency action. The stay operates in accordance with EPA regulations. As the holder of an existing, administratively-continued permit, Keene must continue to comply with conditions of that permit that correspond to the stayed conditions. *Id.* at § 124.16(c)(2). As such:

1. The pH effluent limit in the 2021 Permit is stayed. Keene must comply with the administratively-continued permit’s pH effluent limit, which is identical to the 2021 Permit’s limit.
2. The Total Recoverable Aluminum effluent limit and the corresponding aluminum compliance schedule in the 2021 permit are stayed. Consistent with the administratively-continued permit, the Keene must continue to comply with the administratively-continued permit’s monitoring and reporting requirements for Total Recoverable Aluminum.
3. Contested Conditions 3 and 4 do not effectuate any stay of any 2021 Permit requirements under the circumstances here, because they challenge special conditions that the Region decided not to include in that permit.

EPA has determined that all other conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable on February 1, 2021.

If you have any questions regarding this notice, please contact Kristen Scherb (617) 918-1767 of the Office of Regional Counsel.

¹ Keene did not contest the Total Recoverable Copper effluent limit itself.

Sincerely,

Deb Szaro
Acting Regional Administrator
US EPA-Region 1

cc:

Joanna B. Tourangeau, Esq., Attorney for Keene
Justin Frazier, Town of Marlborough (co-permittee)
Michelle Talbot, Town of Swanzey (co-permittee)
Ted Diers, NHDES
Denny Dart, EPA Region 1