



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

BY FACSIMILE AND CERTIFIED MAIL

February 3, 2006

Eurika Durr
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

RE: CSX Transportation, Inc., NPDES Appeal No. 05-13

Dear Ms. Durr,

Enclosed are one original and five copies of a "Status Report, Notice of Withdrawal of Petition and Joint Motion to Dismiss" in the above-captioned matter. As indicated in the Certificate of Service, a copy of this motion has been served on counsel for the petitioner by fax and by regular mail.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jeanhee Hong".

Jeanhee Hong
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

cc: Thomas Anderson, counsel, CSX Transportation, Inc.
Steve Calder, EPA
Paul Hogan, MassDEP

In the Matter of:

CSX Transportation, Inc.

NPDES Appeal No. 05-13

CERTIFICATE OF SERVICE

I, Jeanhee Hong, hereby certify that one original and five copies of the foregoing Status Report, Notice of Withdrawal of Petition and Joint Motion to Dismiss were mailed by Certified Mail on this 3rd day of February, 2006, to the Environmental Appeals Board 1103B, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and that a true copy of the foregoing was served on the following persons:


By FAX and regular mail:

Thomas Anderson, Esq.
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202

By email and regular mail:

Paul Hogan
Massachusetts DEP
One Winter Street
Boston, MA 02108

Dated: February 3, 2006



Jeanhee Hong
Assistant Regional Counsel
U.S. EPA - Region 1
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RECEIVED
U.S. E.P.A.

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

2006 FEB 7 9 AM 9:56
ENVIR. APPEALS BOARD

In the Matter of:)

Beacon Park Yard)
(CSX Transportation, Inc.))

Permit No. MA0025704)
_____)

NPDES Appeal No. 05-13

**STATUS REPORT, NOTICE OF WITHDRAWAL OF PETITION AND JOINT
MOTION TO DISMISS**

Region 1 of the Environmental Protection Agency ("EPA" or the "Region") and CSX Transportation, Inc. ("CSXT" or "Petitioner") (together, the "Parties") respectfully submit to the Environmental Appeals Board ("EAB" or "Board") this status report, notice of withdrawal and joint motion to dismiss the petition filed in connection with the above-captioned matter.

BACKGROUND

On July 1, 2005, EPA reissued National Pollutant Discharge Elimination System Permit No. MA0025704 ("Permit") to the Petitioner, which authorized the discharge of treated wastewater effluent from the CSXT facility to the Charles River in Massachusetts. On August 10, 2005, the Petitioner timely filed a petition for review ("Petition") with the Board contesting two Permit requirements for Outfall 001A: a revised flow limit of 130,000 gallons per day (gpd) and a new temperature monitoring requirement. CSXT also requested additional time to comply with four other permit requirements at Outfall 001A and Outfall 002A. The Board directed the Region to submit a response by October 3, 2005 that addressed whether the Petitioner satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a).

On September 22, 2005, the Parties filed a Joint Motion for Stay of the Proceedings. 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 December 8, 2005. The Board granted the motion on September 29, 2005.

On December 6, 2005, the Region informed the Board that settlement discussions had led to the Region's: (1) withdrawal of the contested flow limit and temperature monitoring requirement for Outfall 001A in the Permit, and (2) agreement to propose a modification to the Permit that would establish a new flow limit of 225,000 gpd for Outfall 001A and require CSXT to monitor the temperature of the effluent at Outfall 001A only if it uses steam or another process that adds heat to its waste water effluent for cleaning purposes. EPA also informed the Board that all other issues raised in the Petition had been resolved. Accordingly, EPA motioned the Board for an additional extension of time to allow the permit modification process to conclude. On December 8, 2005, the Board granted the motion for an additional extension of time until February 10, 2006, and requested that the Parties file another status report before this date.

**STATUS REPORT, NOTICE OF WITHDRAWAL OF PETITION
AND GROUNDS FOR DISMISSAL**

The Region issued a draft permit modification on December 14, 2005. The proposed modification was subject to public comment from December 20, 2005 to January 19, 2006. EPA received one comment but no request for a public hearing. After review of the comment received, the Region decided to issue the modified permit as proposed. *See* EPA Response to Comment (attached). EPA issued the final permit modification on February 2, 2006.

The modified permit adequately addresses the one issue raised in the Petition that had not been fully resolved as of EPA's December 6, 2005 status report to the Board. The Petitioner

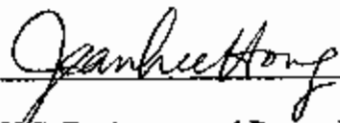
hereby notifies the Board that it is withdrawing its Petition in its entirety as of the date hereof.

The above-captioned matter is now moot.

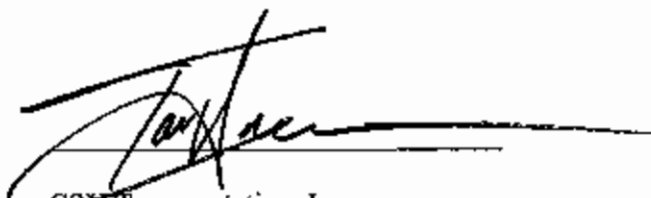
REQUESTED RELIEF

The Parties respectfully request that the Board dismiss the Petition in its entirety.

Respectfully submitted,



U.S. Environmental Protection Agency,
Region 1



CSX Transportation, Inc.

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Dated: February 3, 2006

Dated: February 1, 2006

**CSX Transportation, Inc. Beacon Park Yard, Allston, MA
EPA Response to Comment on Draft National Pollutant Discharge Elimination System
(NPDES) Modified Permit No. MA0025704**

On July 1, 2005, the United States Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP) reissued NPDES Permit No. MA 0025704 (Permit) to CSX Transportation, Inc. (CSXT). The Permit authorized the discharge of treated waste water and storm water effluent from the CSXT facility to the Charles River. On August 10, 2005, CSXT timely filed a petition for review with the Environmental Appeals Board challenging several conditions of the Permit. EPA and MassDEP agreed to propose modifications to the Permit to address concerns raised in CSXT's petition.

From December 20, 2005 to January 19, 2006, EPA and MassDEP solicited public comments on a draft NPDES Modified Permit developed for CSXT. After review of one comment received during the comment period, EPA has made the final decision to issue the Modified Permit as proposed. The following Response to Comment describes and responds to the comment EPA received from the Massachusetts Riverways Program, and explains the basis for EPA's final decision to issue the final Modified Permit without change.

No commenter requested a Public Hearing and EPA determined that a public hearing was not warranted.

EPA provided its rationale for this permit modification in more detail in the Statement of Basis for the draft Modified Permit issued on December 14, 2005. Copies of the Statement of Basis, draft Modified Permit, and final Modified Permit may be obtained by writing or calling Steve Calder, U.S. EPA, 1 Congress Street, Suite 1100 (CIP), Boston, Massachusetts, 02114-2023; Telephone (617) 918-1744.

Response to Comment on the Draft NPDES Modified Permit

Comment: The commenter raised concern about increases in pollutant loads that the increased flow rate would allow for during extreme storm events at Outfall 001A. The commenter stated that "[w]hile the equipment at the site appears adequate to handle the increase in volume, the pollutant loads need to be maintained at the existing maximum flow limitation [in order] to meet anti-backsliding criteria." Specifically, according to the commenter, total suspended sediment load should be limited to 120 lbs/day, which is the load calculated from an effluent limit of 100 mg/l at a flow rate of 144,000 gallons per day (gpd).

Response: EPA's anti-backsliding regulations at 40 C.F.R. § 122.44(l)(1) prohibit the relaxation of effluent limitations or other permit standards or conditions, unless cause for permit modification exists under Section 122.62. As explained in the Statement of Basis for the proposed modification, the increased flow rate authorized by this Modified Permit is permissible because it is based on "material and substantial alterations or additions" to the CSXT facility since issuance of the prior permit, which constitute cause for permit modification. 40 C.F.R. § 122.62(a)(1); Statement of Basis at 2-4. In addition, the authorized increase in flow rate will not result in a relaxation of technology-based effluent limits or a violation of water quality standards.

Under the Modified Permit, CSXT remains subject to the technology-based effluent limit of 100 mg/l for total suspended solids (TSS), the limit contained in CSXT's existing permit. The

treatment system at the CSXT facility is designed to operate effectively at flow rates of up to 576,000 gpd. As such, EPA expects CSXT will achieve a level of TSS treatment at a flow of 225,000 gpd equivalent to the level of treatment it has achieved at a flow of 144,000 gpd, the flow limit to which it was subject prior to this permit modification. That is, EPA expects the discharge at Outfall 001A will contain equivalent concentrations of TSS (no more than 100 mg/l) whether the maximum flow rate is 144,000 gpd or 225,000 gpd.

Massachusetts' Surface Water Quality Standards for Class B inland waters state that "these waters shall be free from floating, suspended and settleable solids in concentrations and combinations that would impair any use assigned to this Class, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom." 314 CMR § 4.05(3)(b)5. On July 1, 2005, MassDEP certified that the conditions of the permit, including the technology-based effluent limit of 100 mg/l for TSS, are sufficient to comply with the Massachusetts Surface Water Quality Standards and anti-degradation policy.

Importantly, the higher flow limit authorized by this Modified Permit (225,000 gpd) will likely *reduce* daily mass pollutant (including TSS) loadings to the Charles River during heavy rainfall events. As noted in the Statement of Basis for the proposed modification, CSXT's storm water system cannot retain large amounts of storm water. Thus, during heavy rainfall events exceeding the system's retention capacity, water that is not pumped through CSXT's treatment system and discharged at Outfall 001A could overflow from the facility into drain pipes leading directly to the Charles River. Such a flooding event could thereby result in the discharge of inadequately-treated process water into the Charles River. *See* Statement of Basis at 3. The higher flow rate authorized by this Modified Permit will enable CSXT to adequately treat these larger volumes of storm water and process water before discharge. To the extent a higher flow rate increases the mass of pollutants discharged *from Outfall 001A* on a given day, it will reduce the overflow from the facility of inadequately-treated storm water and waste water – containing higher concentrations of pollutants – directly into the Charles River.

Even assuming a flow rate of 225,000 gpd would lead to an increase in TSS loadings on a daily basis, EPA has concluded such an increase would be negligible. At a TSS concentration of 100 mg/l, the difference in *mass* of solids at a flow of 144,000 gpd and a flow of 225,000 gpd is approximately 67.8 pounds. Assuming a 7Q10 flow in the Charles River of 22 cubic feet per second,¹ an increase in TSS loadings by 67.8 pounds to the Charles River on a given day would result in an increase in TSS concentrations in the river by 0.6 mg/l. This is a conservative calculation of the impact of CSXT's discharge on TSS concentrations in the river, assuming a maximum flow rate at the facility (225,000 gpd) with maximum permitted TSS concentrations (100 mg/l), and very low flows in the receiving waters. Given that storm water comprises the majority of the flow discharged from the CSXT facility, the flow rate at Outfall 001A is likely to exceed 144,000 gpd only during extreme storm events, which occur infrequently. *See* Statement of Basis at 2, 3. Indeed, data submitted by the facility indicate its flow rate exceeded 144,000 gpd only five times between July 1999 and August 2005, for periods of less than 24 hours each. It is important to note that during such heavy rain events, the flow in the Charles River will be

¹ A 7Q10 flow represents the average of the lowest flows for seven continuous days over a ten year period.

much higher than the 7Q10 flow, substantially diluting any increased TSS loadings added by CSXT's discharge. Thus, the increase in TSS concentrations caused by CSXT's discharge into the Charles River during heavy rain events will likely be substantially less than 0.6 mg/l. In any case, even assuming conservatively that CSXT's discharges at maximum flow would increase the concentration of TSS in the Charles River by 0.6 mg/l on a daily basis, this increase would be negligible and would occur only infrequently for limited periods of time. Because the Charles River is not impaired for TSS, such negligible increases in daily TSS loadings are permissible.

In sum, the increase in CSXT's flow limit to 225,000 gpd enables CSXT to treat and discharge its effluent at a faster rate following heavy rain events but does not result in a relaxation of the effluent limit for TSS, a violation of state water quality standards, or an increase in daily or overall TSS loadings to the receiving waters. Accordingly, the flow limit of 225,000 gpd authorized by this permit modification is both permissible under the Clean Water Act and EPA's implementing regulations and consistent with Massachusetts' anti-degradation regulations and policy.