



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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OFFICE OF THE  
REGIONAL ADMINISTRATOR

**VIA FEDERAL EXPRESS AND ELECTRONIC MAIL**

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

Mr. Gary Brougham, Town Administrator  
Town of Belchertown  
One South Main Street, P.O. Box 670  
Belchertown, MA 01007-0670

Steven J. Williams, Director  
Town of Belchertown, Department of Public Works  
290 Jackson Street, P.O. Box 670  
Belchertown, MA 01007-0670

**Re: Notice of Uncontested and Severable Conditions and Withdrawal of Certain  
Contested Conditions of NPDES Permit MA0102148**

Dear Ms. Durr and Mssrs. Brougham and Williams:

By letter dated July 8, 2005, the Town of Belchertown ("Town") filed, pursuant to 40 C.F.R. § 124.19(a), a Petition for Review ("Petition") of NPDES permit MA0102148 ("Permit") with the Environmental Appeals Board ("Board"). The Permit had been reissued to the Town on June 10, 2005 by the New England Regional Office of the U.S. Environmental Protection Agency ("Region"). The Permit superseded the permit issued by the Region on July 11, 1997 ("Prior Permit").

*Uncontested and Severable Conditions*

The Town's Petition contests, (i) the flow limit, (ii) the mass loading limits (BOD<sub>5</sub>, TSS and phosphorus), (iii) the copper limit and (iv) the Whole Effluent Toxicity limit of the Permit (collectively, "Contested Limits"). Pursuant to 40 C.F.R. § 124.16(a)(2)(ii), this letter notifies you of my determination that the Contested Limits are stayed during the pendency of this appeal. All other conditions of the Permit are uncontested and severable from the contested permit terms. Thus, all of the other conditions are not stayed and will become fully effective enforceable

obligations of the Permit thirty days from the date of this notice, as provided by 40 C.F.R. §124.16(a)(2)(i). With respect to each of the Contested Limits, the corresponding limit, if any, in the Prior Permit shall remain in effect.

*Withdrawal of Certain Contested Conditions*

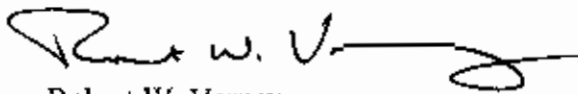
The Region hereby withdraws the above-referenced flow limit and mass loading limits pursuant to 40 C.F.R. § 124.19(d) ("Withdrawn Limits"). The corresponding flow limit in the Prior Permit shall remain in effect (the Prior Permit does not contain mass limits). Those portions of the Permit that are not withdrawn shall continue to remain in effect.

To address the Withdrawn Limits, the Region will issue for public comment a draft permit modification which uses a monthly average to measure compliance with the flow limit rather than the twelve month rolling average currently in the Permit. A monthly averaging period was the compliance measurement used in the Prior Permit. The shift to a twelve month rolling average in the Permit was in response to a Massachusetts Department of Environmental Protection memorandum released in June 12, 2000 ("MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrients in NPDES Permits"). In order to ensure that the change in averaging periods did not result in increased overall pollutant loadings to the receiving waters in violation of applicable anti-degradation provisions of the Massachusetts Water Quality Standards, the Region imposed weekly and monthly mass limits for TSS, BOD<sub>5</sub>, and phosphorus. The Region has concluded that, based on the facts and circumstances of this case, the return to the monthly average flow regime used in the Prior Permit is sufficient justification to remove the contested mass limits from the Permit. The Massachusetts DEP concurs with this determination. The proposed modification is sufficient to address the Town's objections to the Permit. The Town has informed the Region that upon successful completion of the contemplated modification proceedings, the Town will (i) withdraw its Petition in its entirety and (ii) join the Region in motioning the Board to dismiss the Petition.

The draft permit modification will proceed through the same process of public comment and opportunity for a public hearing as would apply to any other permit modification subject to 40 C.F.R. Part 124.

If you have any questions regarding this correspondence, please feel free to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or David Pincumbe, in our Office of Ecosystem Protection, at 617-918-1695.

Sincerely,



Robert W. Varney  
Regional Administrator

cc:

Glenn Haas, Director, Division of Watershed Management, MA DEP

Paul Hogan, Surface Water Permit Program, MA DEP

Linda Murphy, EPA

Roger Janson, EPA

Brian Pitt, EPA

David Pincumbe, EPA

Victor Alvarez, EPA

Steve Sweeney, EPA

Carl Dierker, EPA

Ann Williams, EPA