

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912



NOV 29 2017

VIA ELECTRONIC FILING AND CERTIFIED MAIL

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

Linda Schick
Superintendent
Town of Fairhaven
Water Pollution Control Facility
5 Arsene St.
Fairhaven, MA 02719

**RE: Fairhaven Wastewater Control Facility
NPDES Permit No. MA0100765; NPDES Appeal No. 17-08**

Dear Ms. Schick:

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. MA0100765. EPA reissued that permit to the Town of Fairhaven on September 27, 2017.

The Town of Fairhaven timely petitioned EPA's Environmental Appeals Board ("EAB") for review of the permit on October 27, 2017. In its Petition, the Town contests the following limits and conditions in Part I.A.1 of the Permit: 1) the total nitrogen effluent limit applicable from May 1 through October 31, including footnote 11 to this limit, which generally provides that the limit is to be a rolling average; and 2) footnote 12, which includes conditions related solely to the discharge of nitrogen from November 1 through April 30. For the purposes of this notice and in light of facts in the record of this permit, the Region will assume the Town's challenge to footnote 12 encompasses the total nitrogen effluent limit applicable from November 1 through April 30. Collectively, the foregoing limits and conditions are 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. 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, the Town must comply with those conditions of its previous permit (issued March 4, 2003) that correspond to the stayed conditions, *id.* § 124.16(c)(2), here including the conditions in Part I.A.1 of the previous permit requiring total nitrogen monitoring and reporting.

EPA is notifying you that the Contested Conditions are 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 will become fully effective and enforceable beginning January 1, 2018.

If you have any questions regarding this notice, please contact Michael Curley of the Office of Regional Counsel at (617) 918-1623.

Sincerely,



Deborah A. Szaro
Acting Regional Administrator
US EPA-Region 1

cc: William E. Taylor, Esq.
Vincent Furtado, Fairhaven
Deirdre Desmond, Esq., Massachusetts Department of Environmental Protection
Susannah King, Massachusetts Department of Environmental Protection
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