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

VIA EXPRESS MAIL

February 21, 2008

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

Re: City of Haverhill Wastewater Treatment Facility
NPDES Appeal No. 08-01
NPDES Permit No. MA0101621

Dear Ms. Durr:

Enclosed please find one original and five copies of the Region's Motion to Dismiss the Petition for Review and Motion to Stay Production of Administrative Record, including one Exhibit and a certificate of service, in the above-referenced NPDES permit appeal. A copy of the Motion, Exhibit, and certificate service has also been sent to the Petitioner today.

Thank you for your attention to this matter.

Sincerely,

Jonathan A. Binder
Office of Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1071
Fax: 614-918-0071

Enclosures

cc: Fred G. Haffty, Jr., Facility Manager
City of Haverhill Wastewater Treatment Facility
40 South Porter Street
Haverhill, MA 01835-7646

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

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ENVIR. APPEALS BOARD

_____)	
In the Matter of:)	
)	
City of Haverhill)	NPDES Appeal No. 08-01
Haverhill, Massachusetts)	NPDES Permit No. MA0101621
)	
_____)	

MOTION TO DISMISS THE PETITION FOR REVIEW AND MOTION TO STAY
PRODUCTION OF ADMINISTRATIVE RECORD

Region 1 ("Region") of the United States Environmental Protection Agency ("EPA") respectfully moves the United States EPA Environmental Appeals Board ("Board") to dismiss the Petition for Review ("Petition") of NPDES Permit No. MA0101621 ("Permit") filed by the City of Haverhill, Massachusetts ("City"), in the above-captioned matter. Mr. Fred Haffty, on behalf of the City, has consented to the Region's request to dismiss the Petition. The Board should do so because the Petition has become moot following the Region's February 20, 2008 withdrawal of the Permit's Nitrogen monitoring requirements, which are the only contested conditions of the Permit. The Region also requests that the Board stay its requirement that the Region submit relevant portions of the administrative record and a certified index of the entire administrative record, pending its decision on the Motion to Dismiss the Petition.

DISCUSSION

On December 5, 2007, the Region reissued NPDES Permit No. MA101621 to the City for discharges from the Haverhill Wastewater Treatment Facility. See Attachment to Petition (Permit pages 1-6). The Permit superseded the permit that had been previously issued by the

Region to the City on June 26, 2003. Pursuant to 40 C.F.R. § 124.19(a), the City on January 3, 2008, petitioned the Board to review the Permit's monitoring requirements for Total Ammonia Nitrogen, as N, Total Kjeldahl Nitrogen, Total Nitrate, and Total Nitrite set out in Part I.1.A. of the Permit (collectively the "Nitrogen monitoring requirements"). See Petition at 1-2; Attachment to Petition at p. 3.

The Regional Administrator has authority to withdraw the permit or portions thereof at any time prior to the Board issuing a decision to grant or deny review, provided notification is provided to the Board and any interested parties. See 40 C.F.R. § 124.19(d); In re Washington Aqueduct Water Treatment Plant, NPDES Appeal No. 03-07, slip op. at 2 (EAB, December 15, 2003) (noting that an EPA regional office's right to withdraw is absolute). Indeed, here the Region has determined to withdraw the contested Nitrogen monitoring requirements, and by letter dated February 20, 2008, the Region notified the Board and the City of this determination to withdraw the only contested provisions of the Permit. See Exhibit 1 (Notice of Contested and Uncontested Conditions, and of Withdrawal of Permit Conditions).

The Region intends to further evaluate the need to impose Nitrogen monitoring requirements. If the Region later determines that the Nitrogen monitoring requirements are necessary, the Region will prepare a draft permit modification including such requirements, and will release it for public notice and comment; the Region may also request information pursuant to Section 308(a) of the Clean Water Act (33 U.S.C. § 1318(a)).

Because the Region has withdrawn the Nitrogen monitoring requirements, which are the only conditions in the Permit contested by the City in its Petition, the Board should dismiss the City's appeal of the Nitrogen monitoring requirements as moot.

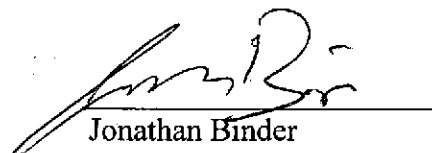
Furthermore, the Region requests relief from the Board's requirement that the Region include with its response "relevant portions of the administrative record . . . together with a certified index of the entire administrative record." Letter from Eurika Durr, Clerk of the Board, to Carl Dierker, Regional Counsel, EPA Region 1, dated January 7, 2008, at 1; see also Environmental Appeals Board Practice Manual at 36. In light of the clear threshold basis for dismissal, compiling and certifying the administrative record would serve little purpose and be unduly burdensome. The Region therefore requests that the Board stay this requirement pending its decision on dismissing the Petition on the grounds of mootness.

REQUESTED RELIEF

The Region, with the consent of the City, respectfully requests the Board to dismiss the City's appeal of the contested Nitrogen monitoring requirements on the grounds that it is moot. If the Board declines to do so, the Region requests 45 days from the date of the notice of the Board's decision to prepare a response to the Petition.

The Region also requests that the Board stay its requirement that the Region submit relevant portions of the administrative record and a certified index of the entire administrative record, pending its decision on the Motion to Dismiss the Petition. If the Board declines to dismiss the Petition as moot, the Region requests 45 days from the date of notice of the Board's decision to prepare the relevant portions of the administrative record and a certified index of the entire record.

Respectfully submitted,


Jonathan Binder

Office of Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1071
Fax: 617-918-0071

Dated: February 21, 2008



EXHIBIT 1

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

February 20, 2008

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

Fred G. Haffty, Jr., Facility Manager
City of Haverhill
Haverhill Wastewater Treatment Facility
40 South Porter Street
Haverhill, MA 01835-7646

Re: Appeal Number NPDES 08-01
Notice of Contested and Uncontested Conditions of NPDES Permit MA0101621
and of Withdrawal of Permit Conditions

Dear Ms. Durr and Mr. Haffty:

By letter dated January 2, 2008, Mr. Haffty filed, pursuant to 40 C.F.R. § 124.19(a), a Petition for Review (the "Petition") of NPDES Permit MA0101621 (the "Permit") reissued by the New England Regional Office of the U.S. Environmental Protection Agency (the "Region") to the City of Haverhill (the "City") on December 5, 2007. Mr. Haffty's January 2, 2008 Petition was received by the Environmental Appeals Board on January 3, 2008.

The City's Petition involves only the monitoring requirements for Total Ammonia Nitrogen, as N, Total Kjeldahl Nitrogen, Total Nitrate, and Total Nitrite set out in Part I.1.A. of the Permit (collectively the "Nitrogen monitoring requirements"). Pursuant to 40 C.F.R. § 124.16(a)(2)(ii), this letter notifies you of my determination that only the Nitrogen monitoring requirements are stayed during the pendency of this appeal. All other conditions of the Permit are uncontested and severable from the Nitrogen monitoring requirements. Thus, all of the other conditions are not stayed and will become fully effective enforceable obligations of the Permit effective on April 1, 2008, as provided by 40 C.F.R. § 124.16(a)(2)(i).

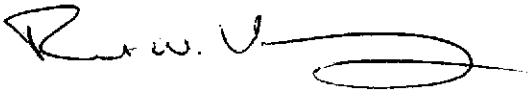
Furthermore, the Region hereby withdraws the Nitrogen monitoring requirements, which are the only contested conditions of the Permit. Thus, effective as of the date of this Notice, the Nitrogen monitoring requirements are no longer conditions of the Permit. The Region intends to further evaluate whether there is a need to impose Nitrogen monitoring requirements. If the

Region determines such Nitrogen monitoring requirements to be necessary, the Region may issue for public comment a draft permit modification, or request information pursuant to Section 308(a) of the Clean Water Act (33 U.S.C. § 1318(a)).

If the Region subsequently determines that a permit modification is necessary, 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. Those portions of the Permit that are not withdrawn, which include the entire Permit except for the Nitrogen monitoring requirements, shall continue to remain in effect.

If you have any questions regarding this correspondence, please feel free to contact Jonathan Binder, the Region's legal counsel in this matter, at 617-918-1071, or Roger Janson, in our Office of Ecosystem Protection, at 617-918-1621.

Sincerely,

A handwritten signature in black ink, appearing to read "R. W. Varney", with a large, stylized flourish at the end.

Robert W. Varney
Regional Administrator

cc: Jonathan Binder, EPA
Doug Corb, EPA
Denny Dart, EPA
Roger Janson, EPA

In re: City of Haverhill Wastewater Treatment Facility
NPDES Appeal Number 08-01

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion to Dismiss the Petition for Review and Motion to Stay Production of Administrative Record in the above-captioned matter on this 21st day of February 2008, to the following persons in the manner described below:

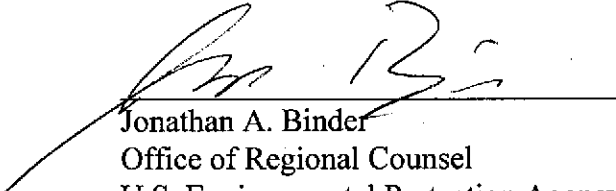
One Original and
Five Copies by Express Mail

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

Copy by First Class Mail, postage prepaid

Fred G. Haffty, Jr., Facility Manager
City of Haverhill Wastewater Treatment Facility
40 South Porter Street
Haverhill, MA 01835-7646

Dated: February 21, 2008



Jonathan A. Binder
Office of Regional Counsel
U.S. Environmental Protection Agency Region 1
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