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ENVIR. APPEALS BOARD

February 9, 2006

VIA CERTIFIED MAIL

U.S. Environmental Protection Agency
Environmental Appeals Board
Eurika Durr, Clerk of the Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-001

Brendan O'Regan, Director of Public Services
City of Newburyport
Newburyport Wastewater Treatment Facility
157 Water Street
Newburyport, MA 01950

**Re: Notice of Uncontested and Severable Conditions of NPDES Permit MA0101427
NPDES Appeal Nos. 04-05 and 04-06.**

Dear Ms. Durr and Mr. O'Regan,

On May 3, 2004, the New England Regional Office of the U.S. Environmental Protection Agency ("Region") re-issued NPDES Permit MA0101427 (the "Permit") to the City of Newburyport, Massachusetts (the "Permittee"). The Permit superseded the NPDES permit issued by the Region on September 17, 1998 ("Prior Permit"). On June 3, 2004, the Permittee filed a Petition for Review of the Permit with the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.19(a). On June 9, 2004, the Island Futures Group ("IFG") also filed a Petition for Review of the Permit with the Board.

Uncontested and Severable Conditions

In its Petition, the Permittee contests the following limits and conditions of the Permit: (i) mass loading limits for total residual chlorine ("TRC"); (ii) concentration based limits for TRC; (iii) monitoring requirements for TRC; (iv) length of the compliance schedule for implementing the more stringent fecal coliform bacteria limits; (v) the fecal coliform bacteria limits; (vi) test method for fecal coliform bacteria; (vii) calibration requirements for the flow meter; (viii) immediate warning system for TRC and fecal coliform bacteria violations; (ix) monitoring

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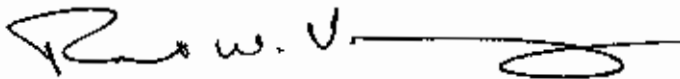
requirement for total Kjeldahl nitrogen; and (x) monitoring requirement for the nitrite plus nitrate.

In its Petition, IFG contests the following limits and conditions of the Permit: (i) the removal of the dissolved oxygen limit which had been in the draft permit; (ii) the use of a twelve-month rolling average in determining compliance with the monthly flow limit; (iii) the fecal coliform bacteria limit; (iv) the compliance schedule for the fecal coliform bacteria limits; (v) the TRC limit; (vi) the absence of a requirement in the Permit to prepare a "projection of flows to plant capacity;" and (vii) the absence of a requirement in the Permit to prepare a comprehensive water management plan. IFG also contests the Massachusetts' water quality classification of the receiving water used by the Region in determining the fecal coliform and TRC limits as well as the Region's application of the Massachusetts antidegradation policy in determining those two limits.

The limits and conditions contested by the Permittee and IFG are collectively referred to herein as the "Contested Conditions." Pursuant to 40 C.F.R. §§ 124.16(a)(2)(ii) and 124.60(b), this letter notifies you of my determination that the Contested Conditions are stayed until final agency action under 40 C.F.R. § 124.19(f). All other conditions of the Permit are uncontested and severable from the Contested Conditions. 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 Conditions, the corresponding term, if any, in the Prior Permit shall remain in effect.

If you have any questions regarding this correspondence, please feel free to contact Tonia Bandrowicz, the Region's legal counsel in this matter, at 617-918-1734, or Michele Barden, in our Office of Ecosystem Protection, at 617-918-1539.

Sincerely,



Robert W. Varney
Regional Administrator

cc:

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