

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

	)	
In the Matter of:	)	
	)	
City of Haverhill	)	
	)	
NPDES Permit No. MA0101621	)	NPDES Appeal No. 19-04
	)	

**JOINT STATUS REPORT AND THIRD MOTION TO STAY THE  
PROCEEDINGS**

Pursuant to 40 C.F.R. § 124.19(f), Region 1 of the United States Environmental Protection Agency (“EPA”) and the City of Haverhill (“Haverhill”) hereby move the Environmental Appeals Board (“Board”) to further stay the proceedings in this matter to provide the parties with a continued opportunity to pursue a negotiated resolution of the issues in dispute. The parties file this Status Report and describe the grounds for this motion as follows:

1. On September 25, 2019, EPA issued a National Pollutant Discharge Elimination System Permit (“NPDES”) to Haverhill authorizing discharges from Haverhill’s wastewater treatment facility and from thirteen Combined Sewer Overflow outfalls to the Merrimack River in Massachusetts.
2. On October 25, 2019, Haverhill timely filed a Petition for Review (“Petition”) with the Board requesting review of certain conditions of the permit. Specifically, Haverhill challenged the effluent limitation for Total Residual Chlorine (“TRC”); the calculation of the critical low flow used to derive the

dilution-based TRC limit; and the 45-minute simulated chlorine holding time requirement.

3. Under 40 C.F.R. § 124.19(b)(2), EPA's response to the Petition, along with a certified index and relevant portions of the administrative record, was due within 30 days after service of the Petition, or November 27, 2019.
4. On November 14, 2019, counsel for the parties filed a *Joint Motion to Stay the Proceedings* so that the parties could discuss whether a negotiated resolution of the issues raised in the Petition was possible.
5. On November 19, 2019, the Board granted the *Joint Motion* and stayed the proceedings until Friday, January 17, 2020 and required a status report from the parties on January 7, 2020. See *Order Granting Joint Motion to Stay Proceedings at pg. 2 (November 19, 2019)*.
6. On January 7, 2020, counsel for the parties filed a *Joint Status Report and Second Motion to Stay the Proceedings* seeking an additional 45-day stay of the proceedings to give the parties additional time to focus on settlement discussions.
7. On January 9, 2020, the Board granted the *Joint Motion* and stayed the proceedings until Monday, March 2, 2020 and required a status report from the parties on February 21, 2020. See *Order Granting Second Motion to Stay Proceedings at pg. 2 (January 9, 2020)*.
8. The parties have diligently engaged in discussions regarding these proceedings including two in-person meetings, numerous conference calls, and exchanges of emails and information to clarify the issues needing

resolution. Because of these discussions, the parties believe that they are close to resolving this dispute, but additional time is needed to clarify the resolution due to the technical nature of the issues raised in the petition.

9. Haverhill's counsel also represent a petitioner in another pending Board appeal, *In re Greater Lawrence Sanitary District*, NPDES Appeal No. 19-05 (filed 10/25/19). The two petitions involve overlapping legal and factual claims. EPA and petitioners have today filed a separate motion for a further stay to accommodate settlement discussions in that case as well. Given the posture of the two cases, EPA and petitioners are presented with an opportunity to efficiently, and consistently, address issues common to both petitions.
10. To allow settlement discussions to unfold and conclude in an orderly manner, while at the same time ensuring matters on the Board's docket are expeditiously resolved, the parties request the following:
  - a. An additional 45-day stay of the proceedings that holds the filing deadline for the EPA's response to petition in abeyance, such that the parties' full attention may be directed toward the technically-complex subject matter that is at issue in settlement discussions, rather than to litigation before the Board.
  - b. An order directing the parties to file a status report ten days prior to the expiration of the 45-day additional stay. In the status report, the parties will report on the progress of negotiations, which will include a discussion of whether it is appropriate to further continue the stay,

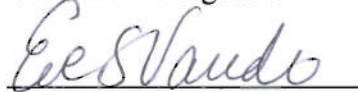
dismiss the Petition, or lift the stay and establish a schedule for EPA to file a response to the Petition within 30 days.

For the reasons set forth above, and in the interest of conserving judicial resources and promoting efficiency, the parties respectfully request that the Board grant this *Joint Status Report and Third Motion to Stay the Proceedings*.

Dated: February 21, 2020

Respectfully submitted,

U.S. EPA – Region 1



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Joint Status Report and Third Motion to Stay the Proceedings*, in connection with *In re City of Haverhill*, NPDES Appeal No. 19-04, was sent to the following persons in the manner indicated:

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Dated: February 21, 2020



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