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

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ENVIR. APPEALS BOARD

In the matter of:)
)

WYMAN GORDON COMPANY,)
NORTH GRAFTON, MASSACHUSETTS)

NPDES Permit No. MA0004341)
_____)

PETITION FOR REVIEW

The Wyman Gordon Company (“Wyman Gordon”) petitions for review (the “Petition”) certain conditions in its final National Pollutant Discharge Elimination System (“NPDES”) permit, No. MA0004341 (the “Permit”). This Petition is being filed before the Environmental Appeals Board (the “Board”) pursuant to 40 C.F.R. § 124.19(a).

On October 19, 2005, the United States Environmental Protection Agency (the “EPA”) Region I, in conjunction with the Massachusetts Department of Environmental Protection (the “DEP”), issued a draft Permit, attached hereto as Exhibit “A” and made a part of this Petition by reference, to Wyman Gordon for its facility located in North Grafton, Massachusetts (the “Facility”). By letter dated November 21, 2005, Wyman Gordon issued a timely response to the draft NPDES permit and fact sheet (the “Response”), attached hereto as Exhibit “B” and made a part of this Petition by reference. Within this Response, Wyman Gordon contested several provisions contained in the draft Permit.

Subsequently, Wyman Gordon received the final Permit from EPA by certified mail on October 2, 2006, attached hereto as Exhibit “C” and made a part of this Petition by reference.

The Permit, however, failed to incorporate Wyman Gordon's concerns and comments regarding EPA's assumptions and methodology with respect to Permit conditions. Accordingly, Wyman Gordon contends in this Petition that certain conditions are based on clearly erroneous findings of fact and conclusions of law.

THRESHOLD PROCEDURAL REQUIREMENTS

Wyman Gordon satisfies the threshold requirements for filing a petition for review under 40 C.F.R. § 124.19(a). Wyman Gordon has standing to petition for review because it filed comments on the draft Permit and the issues raised by Wyman Gordon in this Petition were preserved for review.

PRELIMINARY STATEMENT

On October 19, 2005, Wyman Gordon received the draft Permit. The draft Permit contained various effluent limitations and was a departure from the "report" only requirements of the previous NPDES permit, attached hereto as Exhibit "D" and made a part of this Petition by reference. By letter dated November 21, 2005, Wyman Gordon timely filed with EPA Region I and the DEP substantial comments on certain conditions in the Permit. See Exhibit B. On September 28, 2006, EPA Region I issued a final NPDES Permit, which was received by Wyman Gordon by certified mail on October 2, 2006. See Exhibit C. With respect to Facility operation, the final Permit contains conditions that are restrictive, and in some instances, burdensome. Nevertheless, Wyman Gordon is willing to accept those conditions based on sound science and methodology. By way of example, Wyman Gordon accepts EPA's proposed pH standards for Outfalls 007, 008, 009 and 001 and 010 in addition to certain flow, and TSS permit limits for Outfalls 007, 008 and 009.

There are, however, several conditions in the final Permit which EPA should reconsider because they exceed EPA's authority under the Clean Water Act, lack sufficient support in the

record, and are otherwise substantively and procedurally deficient. Accordingly, Wyman Gordon is challenging EPA Region I's actions in issuing this Permit for the reasons described herein which include, among others, the following:

- The underlying data and modeling used by the EPA in developing Permit limits are scientifically and technically flawed.
- EPA failed to consider and/or respond to numerous, significant comments on the draft Permit made by Wyman Gordon in the Response as required by 40 C.F.R. § 124.17. Failure to respond to significant comments is grounds for remand.
- EPA's attempts to impose the Permit conditions contested by Wyman Gordon exceed the Agency's authority under the Clean Water Act, lack sufficient support in the record, and are otherwise substantively and procedurally deficient.
- The arbitrary actions by EPA in issuing the contested permit provisions will impose an extraordinary and substantial financial hardship on Wyman Gordon.

SPECIFIC FACTUAL AND LEGAL ISSUES

Wyman Gordon is contesting the following provisions of the Permit, which are stayed pursuant to 40 C.F.R. § 124.16(a)(1):

Part I.A.1.

Oil and Grease	TSS
Copper	Whole Effluent Toxicity Testing, LC ₅₀

Part I.A.2.

Oil and Grease	TSS
Copper	Whole Effluent Toxicity Testing, LC ₅₀

Part I.A.3.

Oil and Grease	Copper
Aluminum	Iron
Whole Effluent Toxicity Testing, LC ₅₀	

Part I.A.4.

Oil and Grease	Copper
Aluminum	Iron
Zinc	Whole Effluent Toxicity Testing, LC ₅₀

Part I.A.5.

Oil and Grease	Copper
Iron	Aluminum
Whole Effluent Toxicity Testing, LC ₅₀	

Part I.A.12(3).

Maximum recycling and reuse of process water, storm water, and non-contact cooling water by the facility to result in minimum, intermittent and infrequent withdrawals of river water through the CWIS.

Part I.A.1. Outfall 001

With respect to Outfall 001, EPA categorized the discharge region in East Brook as a wetland. See Exhibit C. Wyman Gordon disputes this claim and maintains that the discharge area from Outfall 001 is a manmade channel that empties into East Brook. As acknowledged by EPA, East Brook extends several thousand feet upstream of the Facility and maintains a consistent stream. By ignoring these characteristics, EPA undervalued and overlooked more appropriate flow rates for the receiving water. Accordingly, a dilution factor of 0.0 proposed by

EPA is not representative of actual flow conditions. A dilution factor is important because it relates to background stream flow and affects “whether a discharge has a “reasonable potential” to violate water quality standards, and in establishing the appropriate effluent limit” as demonstrated in EPA's reply to Wyman Gordon's Response (the “Reply”) attached hereto as Exhibit “E” and made a part of this Petition by reference. As a result, a more representative flow factor is necessary in order to determine proper effluent limits.

Additionally, EPA improperly evaluated low flow and should have properly considered the particular hydrogeological characteristics of the discharge area and Outfall. The flows from Outfall 001 during low flow conditions are far less than those used by EPA in its calculations because Outfall 001 flows only occur during overflow situations. Importantly, the overflow conditions only occur approximately twice per year. While EPA offers details into its methodology it does not adequately address this concern. See Exhibit E.

Regarding hardness calculations for Outfall 001, EPA Region I undervalued the volume of water in East Brook and utilized flow levels that are not indicative of actual conditions. Wyman Gordon disputes EPA's claims of a “great disparity between stream flow and maximum daily flow” contained in the Fact Sheet of the draft Permit, attached hereto as Exhibit “F” and made a part of this Petition by reference. In arriving at a translator, EPA relied on a worst case scenario rather than acknowledging actual conditions associated with receiving waters and effluent flows. EPA unnecessarily utilized a translator equivalent to the criteria conversion factor. The incorrect dilution, hardness and translator values have a direct correlation to the derived effluent limitations for Outfall 001. As a result, Wyman Gordon seeks the replacement of all effluent limitations with “report only” requirements.

Part I.A.2. Outfall 010

With respect to Outfall 010, EPA again undervalued and overlooked more appropriate flow rates for the receiving water, the Quinsigamond River. Specifically, EPA underestimates the flow rate for this receiving water. Accordingly, EPA's dilution factor for this Outfall is thus incorrect because it is derived from the faulty flow estimates.

Furthermore, EPA improperly evaluated low flow and should have properly evaluated the particular hydrogeological characteristics of the discharge area. The flow from Outfall 010 during the low flow conditions is far less than that used by EPA because flows from Outfall 010 only occur during overflow situations. Importantly, the overflow conditions only occur approximately twice per year. While EPA offers details into its methodology in its Reply, it does not adequately address this concern. See Exhibit E.

In calculating hardness, EPA Region I again undervalued the volume of water in the Quinsigamond River and utilized flow levels that are not indicative of actual conditions. Similarly, the EPA Region I relied on a worst case scenario rather than acknowledging actual conditions associated with receiving waters and effluent flows in arriving at a translator. The incorrect dilution, hardness and translator values have a direct correlation to the derived effluent limitations for Outfall 010. As a result, Wyman Gordon seeks the replacement of all effluent limitations with "report only" requirements.

Part I.A.3-4. Outfalls 007 and 008

In evaluating Outfalls 007 and 008, EPA ignored more appropriate flow rates for the receiving water, Bonny Brook. As acknowledged by EPA, the headwaters of Bonny Brook extend several thousand feet upstream of the Facility, with flows traveling through several neighborhoods and roadways, including Route 122. Based upon the hydrogeological characteristics of the area, the actual flow is greater than that proposed by EPA. EPA's flow

dilution factor for these Outfalls is thus incorrect because it is derived from the incorrect flow estimates.

Moreover, EPA improperly analyzed low flow for these outfalls and did not sufficiently analyze the hydrogeological characteristics of the discharge area. During the low flow conditions, the maximum flows from Outfalls 007 and 008 are far less than those used by EPA because flows from Outfalls 007 and 008 consist of storm water only. While EPA offers details into its methodology in its Reply, it does not adequately address this concern.

In calculating hardness, EPA Region I utilized volumes and flow levels of Bonny Brook that are not indicative of actual conditions. Similarly, EPA relied on a worst case scenario rather than acknowledging actual conditions associated with Bonny Brook and effluent flows in arriving at a translator. The incorrect dilution, hardness and translator values have a direct correlation to the derived effluent limitations for the Outfall. As a result, Wyman Gordon seeks the replacement of all effluent limitations with “report only” requirements.

The imposition of Whole Effluent Toxicity (“WET”) Testing on Outfalls 007 and 008 is overburdensome and is not warranted at the Facility. These Outfalls convey and contain storm water only, as a result, WET testing is impractical for these Outfalls. Additionally, data for Outfall 008 from June 1999 to June 2003 demonstrated five (5) consecutive satisfactory test results for WET testing. The one anomaly in testing data resulted from flooding due to beaver damming. EPA personnel have confirmed the presence of this beaver dam during a site visit conducted by Stuart Gray of the EPA on May 10, 2005. See Exhibit D. Furthermore, Wyman Gordon seeks elimination of WET testing and “report only” requirements because of past WET testing results and given Wyman Gordon’s considerable efforts in managing storm water and process water discharges. In mandating WET testing, EPA failed to adequately consider the

following steps undertaken by Wyman Gordon at considerable expense and effort: construction of a Runoff Management Facility (“RMF”); construction of an Oily Wastewater Pretreatment System (“OWPS”); the closing of impoundments; implementing a wide-ranging Storm Water Pollution Prevention Plan (“SWPPP”) including Best Management Practices (“BMPs”); and a thorough testing, maintenance and monitoring program.

Part I.A.5. Outfall 009

With respect to Outfall 009, EPA categorized the discharge region in East Brook as a wetland, as it did for Outfall 001. The discharge area from Outfall 009, however, is a manmade channel that empties into East Brook. Moreover, as acknowledged by EPA, East Brook extends several thousand feet upstream of the Facility and maintains a consistent stream. EPA once again failed to analyze actual flow rates for the receiving water, East Brook. Accordingly, the proposed dilution factor is not representative of actual flow conditions. Correction of this flow rate is essential because this flow rate is an element of the dilution calculation.

As with the other Outfalls, EPA improperly analyzed low flow and failed to adequately evaluate the hydrogeological characteristics of the discharge area. The maximum flows from Outfall 009 during the low flow conditions are far less than that used by EPA, as supported by the fact that the flow from Outfall 009 consists of storm water. As previously stated, while EPA offers details into its methodology in its Reply, it does not adequately address this concern. See Exhibit B.

With respect to hardness, EPA again underestimated the volume of water in receiving waters and utilized flow levels that are not indicative of actual conditions. Similarly, the EPA Region I relied on a worst case scenario rather than acknowledging actual conditions associated with receiving waters and effluent flows in arriving at a translator. The incorrect dilution,

hardness and translator values have a direct correlation to the derived effluent limitations for the Outfall. As a result, Wyman Gordon seeks the replacement of all effluent limitations with “report only” requirements.

Wyman Gordon further contests the effluent limitations for Outfall 009 because of the upstream environment of East Brook. Specifically, drainage systems from neighborhoods and Route 122 tie into the system located at the Facility and likely a source of oil and other materials from vehicles, and contain sand and salt used to treat roadways. As a result, it would be impossible to reach the limitations proposed by EPA without considerable expense to both the Commonwealth of Massachusetts and the local community. EPA failed to adequately consider these circumstances in setting the Permit conditions.

As with the other storm water outfalls, the imposition of Whole Effluent Toxicity Testing on Outfall 009 is overburdensome and is no longer warranted at the Facility. Outfall data from Outfall 008 for June 1999 to June 2003 demonstrated five (5) consecutive satisfactory test results. The one anomaly in testing data resulted from flooding due to beaver damming. The data from this outfall is representative of 009 because of the similar receiving waters. EPA personnel have confirmed the presence of this dam during a site visit conducted by Stuart Gray of the EPA on May 10, 2005. See Exhibit D. Furthermore, Wyman Gordon seeks elimination of WET testing and “report only” requirements because of past WET testing results and given Wyman Gordon’s considerable efforts in managing storm water and process water discharges. The EPA largely ignored the following steps undertaken by Wyman Gordon at considerable expense and effort: construction of a Runoff Management Facility (“RMF”); construction of an Oily Wastewater Pretreatment System (“OWPS”); the closing of impoundments; implementing a

wide-ranging Storm Water Pollution Prevention Plan (“SWPPP”) including Best Management Practices (“BMPs”); and thorough a testing, maintenance and monitoring program.

Part I.A.12(3).

The imposition of a condition requiring maximum recycling and reuse of process water, storm water, and non-contact cooling water to result in minimum, intermittent and infrequent withdrawals of river water through the CWIS is not necessary. Specifically, Wyman Gordon’s historically low withdrawal rates, and the extent of current recycling and reuse of process water, storm water, and non-contact cooling water render such a condition unwarranted.

GROUNDNS FOR APPEAL

A. The contested permit conditions are based upon clear errors of fact and/or law.

The facts and circumstances outlined in this Petition clearly demonstrate that the contested Permit provisions are based on errors of fact and/or law. The Board should review the contested Permit conditions because the matters to be considered present significant issues of fact and law requiring adjudication.

B. The Board should accept the Petition both as matters of discretion and of policy.

The Board has the authority to review EPA Region I’s decision to issue the final Permit with the contested permit limits and conditions. For the following reasons, the Board should exercise that power here.

First, EPA relied upon flawed scientific criteria, data and modeling in arriving at the Permit limits and conditions.

Second, issuing permits with overly stringent, unnecessary limits that ignore actual conditions at the Facility and surrounding areas is an unfair and inappropriate practice that this Board should not allow.

Third, EPA has failed to adequately consider Wyman Gordon's considerable efforts, programs and procedures for managing storm water and process water discharges, including the construction of the RMF and OWPS, the closing of impoundments and the implementation of the SWPPP and BMPs.

For the reasons outlined in the Petition, issuing a permit with these unnecessary and and/or unattainable limitations results in the imposition of overly stringent permit limitations despite alternative regulatory options and means of calculating limitations. The limitations also fail to take into consideration the efforts by Wyman Gordon in working with the EPA and DEP to effectively manage storm water and process water discharges. Furthermore, imposing such permit limitations is arbitrary. Thus, the Board should review the contested Permit conditions as a matter of discretion and because the contested permit conditions give rise to important policy considerations.

CONCLUSION

For the reasons stated in this Petition, Wyman Gordon appeals to the Board the provisions of the Permit contested. As relief, Wyman Gordon requests the following:

1. That the Board grant a review of the Petition;
2. that to the extent stayed by operation of 40 C.F.R. § 124.16(a) or §124.60(b), the contested Permit conditions be stayed pending the outcome of this and the related state administrative proceedings;
3. that EPA be ordered to modify the Permit by deleting those provisions, limitations, and conditions contested by Wyman Gordon;
4. that the contested portions of the Permit be stricken as unenforceable and void, where appropriate; and

5. such interim relief as may be appropriate under the circumstances, including orders requiring further development by EPA of the administrative record, further correction by EPA of the technical flaws in the water quality model used to develop the Permit limits, remand to the EPA for further permitting procedures, and other like interim relief.

Respectfully submitted,

WYMAN GORDON COMPANY

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