

**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, NOTICE OF PARTIAL WITHDRAWAL AND
FOURTH 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 finalize 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. On February 21, 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.

9. On February 26, 2020, the Board granted the Joint Motion and stayed the proceedings until Thursday, April 16, 2020 and required a status report from the parties on April 6, 2020. See Order Granting Third Motion to Stay Proceedings at pg. 2 (February 26, 2020).
10. The parties have diligently engaged in discussions regarding these proceedings and have negotiated a resolution of this dispute. EPA has agreed to withdraw the 45-minute simulated chlorine holding time requirement, pursuant to 40 C.F.R. § 124.19(j), and prepare a new draft permit addressing the condition so withdrawn, following procedures under 40 C.F.R. § 124.6. EPA is currently preparing a form of draft permit modification for Haverhill's review and concurrence. Upon confirmation that this draft accurately reflects the parties' agreement, EPA will commit in writing to initiate permit modification proceedings as soon as possible and at that time Haverhill will request dismissal of its petition in its entirety under 40 C.F.R. § 124.19(k).
11. EPA intends to share the form of draft permit modification with Haverhill within one week. Upon receipt of this draft, Haverhill's legal and technical representatives will need sufficient time to review it.
12. To allow settlement discussions to 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 14-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 finalizing settlement discussions, rather than to litigation before the Board.

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, Notice of Partial Withdrawal and Fourth Motion to Stay the Proceedings.

Dated: April 6, 2020

Respectfully submitted,

U.S. EPA – Region 1

City of Haverhill

Samir Bukhari, Esq.
Eve S. Vaudo, Esq.
John Kilborn, Esq.
Office of Regional Counsel
5 Post Office Square, Suite 100
Mailcode: 04-6
Boston, MA 02109-3912
Tel: (617) 918-1095
Fax: (617) 918-0095
E-mail: bukhari.samir@epa.gov
vaudo.eve@epa.gov
kilborn.john@epa.gov

Matthew J. Connolly, Esq.
Michael A. Leon, Esq.
Matthew Snell, Esq.
Valerie A. Moore, Esq.
Nutter McClennen & Fish, LLP
Seaport West, 155 Seaport Blvd.
Boston, Massachusetts
E-mail: mconnolly@nutter.com
mleon@nutter.com
msnell@nutter.com
[ymoore@nutter.com](mailto:y Moore@nutter.com)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Status Report, Notice of Partial Withdrawal and Fourth 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:

By Electronic Filing:

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

By Electronic Mail:

Matthew J. Connolly
Michael A. Leon
Matthew Snell
Valerie A. Moore
Nutter McClennen & Fish, LLP
Seaport West, 155 Seaport Blvd.
Boston, MA 02210

Isaiah Lewis
Wastewater Division
City of Haverhill
40 South Porter Street
Haverhill, MA 01835

Town of Groveland
Town Hall
183 Main Street
Groveland, MA 01834

Dated: April 6, 2020

Samir Bukhari