

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

In re: City of Marlborough, Massachusetts

Westerly Wastewater Treatment Facility NPDES Appeal No. 21-04

NPDES Permit No. MA0100480

PETITIONER'S MOTION TO DISMISS PETITION FOR REVIEW

Submitted by

OARS, Inc.

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December 15, 2021

PETITIONER'S MOTION TO DISMISS PETITION FOR REVIEW

Petitioner OARS, Inc. hereby moves to dismiss its Petition for Review of NPDES Permit No. MA0100480 ("Petition"). See https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/General+Information/Frequently+Asked+Questions.¹ The Permit was issued to the City of Marlborough, Massachusetts by EPA Region 1 on October 25, 2021; it was received by OARS on October 26, 2021. OARS filed the Petition on November 24, 2021.

The reason for this motion is that on even date herewith the Region filed a letter with the Board indicating (1) that it has withdrawn the "summer" (April 1-October 31) mass-based Total Phosphorus limit contained in the Final Permit at Part I.A.1, (2) that the Region intends to prepare a new draft permit addressing the portion so withdrawn, (3) that until such time as a new permit addressing the withdrawn portion is issued, the corresponding portions of the prior permit shall remain in effect, (4) that in issuing any such new permit, the Region proposes to regulate Total Phosphorus in concentration-based form, and (5) that the Region intends to maintain Total Phosphorus limits in concentration-based form for all permittees on the Assabet River subject to the Assabet River Total Maximum Daily Load developed by the Massachusetts Department of Environmental Protection.

¹ **(18) What is the procedure for withdrawing a petition that has been filed with the Board?**

The petitioner may file a motion requesting that the Board dismiss the petition. The motion must briefly state the reason for the request.

In consideration of the foregoing undertakings by the Region, OARS' Motion to Dismiss includes dismissal of its Petition to the extent that the Petition challenged the "winter" (November 1- March 31) Total Phosphorus limit. This will have the result that the permit provision relating to the winter limit for Total Phosphorus will neither be contested nor stayed and will come into effect in accordance with and on the date set forth in the final permit decision. *See* EPA letter at 3.

The Region does not oppose this motion.

OARS, Inc.

By its Attorney,

/s/ Stephen M. Leonard

Stephen M. Leonard

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CERTIFICATE OF SERVICE

I certify that I caused to be served by first class mail a copy of this Motion to Dismiss Petition for Review on:

Deborah Szaro, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912;

Lealdon Langley, Director
Division of Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
One Winter Street
Boston, MA 02108-4746; and

Sean Divoli, Commissioner of Public Works
The City of Marlborough
Public Works Department
135 Neil St.
Marlborough, MA 01752;

Dated: December 15, 2021

/s/ Stephen M. Leonard
Stephen M. Leonard