



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

FEB 22 2010

Via Electronic Submission and Federal Express

Eurika Durr
Clerk of the Board
U.S. EPA Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

OFFICE OF THE
REGIONAL ADMINISTRATOR

Via Federal Express

The Honorable Nancy Stevens
Mayor, City of Marlborough
City Hall
140 Main Street
Marlborough, MA 01752

**Re: City of Marlborough, Massachusetts
Notice of Withdrawal of NPDES Permit No. MA0100480 Modification
NPDES Appeal Nos. 10-01, 10-02 and 10-03**

Dear Ms. Durr and Mayor Stevens:

In accordance with 40 C.F.R. § 124.19(d), Region 1 of the United States Environmental Protection Agency is notifying you that it is withdrawing, in its entirety, the November 16, 2009, final permit modification of NPDES Permit No. MA0100480.

Background

On May 26, 2005, the Region reissued a final NPDES permit to the City of Marlborough, Massachusetts ("Permittee"), for discharges from the Marlborough Westerly Wastewater Treatment Facility ("Existing Permit"). Following appeals of the permit to the United States EPA Environmental Appeals Board ("Board"), the Region issued a notice that identified the uncontested and severable portions of the permit and that placed them into effect as of November 25, 2005. Upon settlement of the appeals and subsequent dismissal of the petitions for review by the Board, the Region issued a final permit decision placing all remaining portions of the permit into effect as of May 17, 2006.¹

¹ See *In re City of Marlborough Wastewater Treatment Facility*, NPDES Appeal No. 05-09, Order Dismissing Petition for Review (EAB, April 6, 2006) and *In re City of Marlborough Wastewater Treatment Facility*, NPDES Appeal No. 05-05, Order Dismissing Petition for Review (EAB, April 12, 2006).

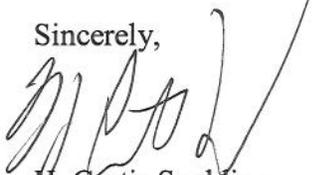
Following a request for a permit modification from the Permittee, Region 1 issued a draft permit modification for public notice and comment on July 9, 2008. After consideration of the comments received on the draft modification, the Region issued a final permit modification on November 16, 2009. The Permittee, the Town of Stow, Massachusetts, and the Organization for the Assabet River timely petitioned the Board to review the final permit modification. The petitioners' request for Board review stayed the effective date of the permit modification. *See* 40 C.F.R. § 124.15(b)(2). The Region did not issue a notice of uncontested and severable conditions under 40 C.F.R. §§ 124.16 and 124.60. Therefore, no portion of the final permit modification went into effect.

Withdrawal of Appealed Permit Modification

Federal regulations governing the NPDES permitting program give EPA regional offices an absolute right to withdraw portions or all of a permit at any time prior to the Board rendering a decision on a permit appeal. *See* 40 C.F.R. § 124.19(d); *In re Wash. Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, Dec. 15, 2003). Section 124.19(d) specifies further that, once the permit is withdrawn, the Regional Administrator must "prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part." As the Board has not rendered a decision to grant or deny review of the permit modification, the Region is authorized to act under 40 C.F.R. § 124.19(d). It is hereby withdrawing the final permit modification, in its entirety, effective immediately. The Region will prepare a new draft permit in accordance with applicable regulations. Until this new permit becomes final and effective, the Existing Permit shall remain in effect.

If you have any questions regarding this notice, please contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or Brian Pitt, in our Office of Ecosystem Protection, at 617-918-1875.

Sincerely,



H. Curtis Spalding
Regional Administrator

Cc:

Via First Class U.S. Mail

Donald L. Anglehart, Law Office of Donald L. Anglehart, LLC (counsel for Marlborough)

Johnathan D. Witten, Esq., Daley and Witten, LLC (counsel for Stow)

Stephen M. Leonard, Esq., Cronin & Leonard (counsel for OAR)

Robin Lepore, Esq., DOI

James Fosburgh, NPS

Libby Herland, USFWS

Laurie Burt, MassDEP

Glenn Haas, MassDEP