

Under applicable regulations governing appeals to the Board, the Regional Administrator has authority to “withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn” at any time prior to the Board issuing a decision to grant or deny review provided proper notification is provided to the Board and any interested parties. *See* 40 C.F.R. § 124.19(d); *In Washington Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, December 15, 2003) (noting that an EPA regional office’s right to withdraw is absolute). The Region has determined to withdraw the contested metals limits and has notified the Board and Petitioner of the same. *See* Exhibit 1.¹ The Region intends to prepare a new draft permit pertaining to the contested metals limits and to release it for public notice and comment. Until such time as Region 1 issues a final permit pertaining to the contested metals limits, and such limits become effective, the corresponding provisions of the Prior Permit for total recoverable copper, zinc and lead will remain in effect.²

The Region respectfully requests the Board to dismiss the City’s appeal of the contested metals limits, set forth in Part II of the Petition, on the grounds that it is moot.

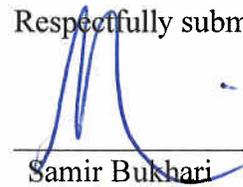
¹ The Region has filed an opposition to Petition with the Board addressing the contested total phosphorus limits.

² The uncontested portions of the Permit are scheduled to go into effect on December 1, 2007. *See* Notice of Uncontested and Severable Conditions, dated October 18, 2007.

CONCLUSION

The portion of the City's Petition pertaining to the contested metals conditions should be dismissed as moot.

Respectfully submitted,



Samir Bukhari
Assistant Regional Counsel
Office of Regional Counsel
EPA-Region 1

Dated: November 20, 2007

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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

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VIA FEDERAL EXPRESS

Eureka Durr, Clerk of the Board (MC 1103B)
Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G Street, NW, Suite 600
Washington, D.C. 20005

John A. Maclean, City Manager
City of Keene
3 Washington Street
Keene, New Hampshire 03431-3191

Re: Notice of Withdrawal of Certain Contested Permit Conditions
NPDES Permit No. NH0100790
NPDES Appeal No. 07-18

Dear Ms. Durr and Mr. Maclean:

On September 28, 2007, the City of Keene, New Hampshire ("Permittee"), filed a Petition for Review of NPDES Permit No. NH0100790 ("Permit") with the U.S. Environmental Protection Agency Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.19(a). The Permit had been reissued to the Permittee on August 24, 2007, by Region 1 of the U.S. EPA ("Region"). The Permit superseded the permit issued by the Region on April 15, 1994 ("Prior Permit").

In its Petition for Review, the Permittee contested the limits in the Permit for total phosphorus and for certain metals, specifically total recoverable copper, lead and zinc (the "contested metals limits").

Pursuant to 40 C.F.R. § 124.19(d), the Region is hereby withdrawing the contested metals limits. The Region intends to prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. The new draft permit will be released for public notice and comment. Until such time as Region 1 issues a final permit pertaining to the contested metals limits, the

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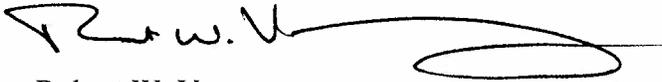
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corresponding provisions of the Prior Permit for total recoverable copper, zinc and lead shall remain in effect.¹

If you have any questions regarding this correspondence, please feel free to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or Jeanne Voorhees, in our Office of Ecosystem Protection, at 617-918-1686.

Sincerely,



Robert W. Varney
Regional Administrator
EPA-Region 1

cc: Andrew W. Serrell, Rath, Young and Pignatelli, P.C. (via First Class US Mail)
Roger Janson, EPA
Brian Pitt, EPA
Jeanne Voorhees, EPA
Edie Goldman, EPA
Denny Dart, EPA

¹ The uncontested portions of the Permit are scheduled to go into effect on December 1, 2007. See Notice of Uncontested and Severable Conditions, dated October 18, 2007.