



TOWN OF MARION
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MARION, MASSACHUSETTS 02738-1519

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ENVIR. APPEALS BOARD

October 31, 2006

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

Mr. Glenn Haas, Director
Office of Watershed Management
Commonwealth of Massachusetts
Department of Environmental Protection
One Winter Street
Boston, MA 02108

Subject: Petition for NPDES Permit Appeal (NPDES No. MA0100030)
Town of Marion, Massachusetts

Dear Sir or Madam:

The Town of Marion is in receipt of our renewed final National Pollution Discharge Elimination System (NPDES) permit, received in an October 5, 2006 transmittal from the U.S. EPA's Boston, Massachusetts, office. The Town, together with our consulting engineer (CDM) has reviewed the permit and must appeal several of its provisions. This letter constitutes our petition for administrative review.

It is important to note that the Town of Marion received a draft permit renewal for this discharge in July 2005 and provided comments during the public comment period. The final permit, however, contains several substantial changes that would require significant capital and operating funds to meet. These include lowering the fecal coliform limit, addition of parameters to be monitored, and inclusion of increased, flow proportional sampling requirements. When changes of this magnitude occur, EPA's regulations 40 CFR § 124.14(b) require the agency to prepare a new draft permit, prepare a new fact sheet or re-open or extend the comment period. This did not occur.

The EPA has failed to comply with 40 CFR 124.14 by issuing a final permit without reopening the public comment period. The final permit is materially different from the draft permit, and the Town has had no opportunity to review or comment on these significant changes.

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40 CFR 124.14(4)(b) states in relevant part:

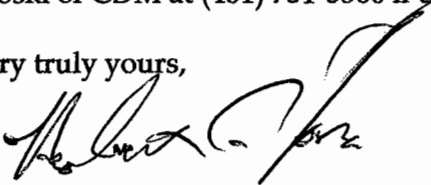
- (b) If any data information or argument submitted during the public comment period, including information or arguments required under 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:
- (1) Prepare a new draft permit, appropriately modified, under 124.6;
 - (2) Prepare a revised statement of basis under 124.7, a fact sheet or revised fact sheet under 124.8 and reopen the comment period under 124.14; or
 - (3) Reopen or extend the comment period under 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

Here, without benefit of the Town's input with respect to adding a significant condition to the new permit the EPA has, in response to comments, required the Town to meet a significantly more stringent limit for disinfection as well as requiring increased monitoring and sampling. If the issue raised in the comment period was substantial enough to warrant a change in the draft permit then it must be considered a "substantial new question concerning a permit" and the EPA was required to comply with 40 CFR 124.14(4)(b). The EPA did not and, as a result of EPA's non-compliance with its own regulations, the Board should strike the revised permit requirements.

We request that EPA withdraw this final permit and reissue a draft permit and fact sheet so that the significantly revised permit can be subject to applicable public review procedures.

Thank you for your consideration of our petition. Please call me at (508) 748-3540 or Robert Otoski of CDM at (401) 751-5360 if there are any questions or comments.

Very truly yours,



Robert C. Zora
Superintendent of Public Works
cc: Board of Selectmen
Julia Whitlock, Town Administrator
Paul Hogan, DEP - Worcester
Joseph Shepherd, DEP - Lakeville
Robert Otoski, CDM