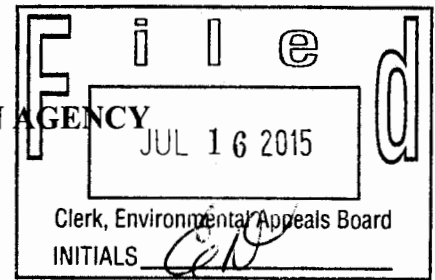


**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**



\_\_\_\_\_  
In re: )

City of Nashua )

NPDES Permit No. NH0100170 )  
\_\_\_\_\_ )

NPDES Appeal No. 15-06

ORDER ADDRESSING PARTIAL WITHDRAWAL OF PERMIT CONDITIONS  
AND  
DISMISSING RELATED PERMIT CHALLENGES AS MOOT

**I. Background**

On April 13, 2015, the City of Nashua, New Hampshire (the "City") filed a petition seeking review of several conditions in a National Pollutant Discharge Elimination permit issued by U.S. EPA Region 1 (the "Region"). The permit authorizes discharges from the City's Wastewater Treatment Facility and nine Combined Sewer Overflows into the Merrimack and Nashua rivers. In its petition, the City contests, among other things, the phosphorus effluent limit and lead effluent limit for Outfall 001 (Permit Conditions I.A.1), and the deadline for the development of a Collection System Operation and Maintenance Plan (Permit Condition I.E.5). With respect to these conditions the City requests, among other things, that the Region include a compliance schedule to meet any phosphorus limits in the permit, recalculate the "reasonable potential" calculation for lead, and extend the deadline for completing the Collection System Operation and Maintenance Plan. *See* Petition for Review of City of Nashua Wastewater Treatment Facility NPDES Permit Issue by Region 1 (Apr. 13, 2015) ("Petition") at 13 (Sec. IV.C.3), 16-18 (Sec. IV.D), 26-27 (Sec. IV.M). The Region filed a response to the petition on

May 13, 2015. Since then the Region has decided to modify portions of the permit to address these requests as follows:

*A. Notice of Partial Withdrawal and Motion to Partially Dismiss*

First, on June 12, 2015, the Region filed a notice of partial withdrawal notifying the Environmental Appeals Board ("Board") of its intent to modify portions of the final permit. Under the regulations that govern this permit proceeding, the Regional Administrator may, at any time prior to 30 days from the filing of its response and upon notification to the Board, withdraw the permit, or portions of it, and prepare a new draft under 40 C.F.R. §124.16. *See* 40 C.F.R. §124.19(j). If the Regional Administrator wishes to withdraw the permit or portions of the permit after the 30-day deadline, it must not do so unilaterally, but must seek leave from the Board. The Region filed the June 12 notice before the 30-day deadline.

The June 12 notice explained the Region's intent to add a compliance schedule for achieving the total phosphorus limitation of 0.8mg/l,<sup>1</sup> and to extend the deadline for the development of the Collection System Operation and Maintenance Plan.<sup>2</sup> It also explained that the permit modification process will be subject to public notice and opportunity to comment pursuant to 40 C.F.R. § 124.10. Also on June 12, the Region filed a motion requesting that the

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<sup>1</sup> The current permit does not contain a compliance schedule for achieving the total phosphorus limitation of 0.8 mg/l.

<sup>2</sup> The current permit establishes a compliance schedule of 24 months to complete a Collection System Operation and Maintenance Plan. The Region proposes to extend the compliance schedule to 36 months.

Board dismiss as moot the related issues in Sections IV.C.3 and IV.M of the petition and representing that the City assented to the dismissal. Assented-to Motion to Partially Dismiss the Petition for Review as Moot at 2 (June 12, 2015).

*B. Motion Seeking Leave to Withdraw and to Partially Dismiss*

A few weeks later, on July 7, 2015, the Region filed a motion seeking leave from the Board to withdraw the total recoverable lead limit from the permit. Assented-to-Motion to Withdraw a Portion of the Permit and to Partially Dismiss the Petition for Review as Moot at 2 (July 7, 2015). Because the Region decided to withdraw this permit limit after the 30-day deadline, it now seeks leave from the Board to withdraw the permit condition. The motion explains that after review of the administrative record, effluent data presented in the petition, and discussions with the City, the Region determined that it would be appropriate to withdraw the total recoverable lead effluent limit from the permit for lack of reasonable potential. The Region represents that it will address this withdrawal during the upcoming modification process.

As with its earlier withdrawal, the Region requests that the Board partially dismiss as moot Section IV.D of the petition as it relates to the inclusion of the total recoverable lead limit in the permit, and represents that the City assented to the dismissal.

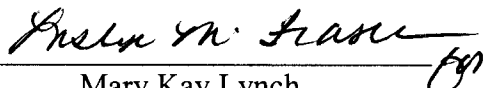
**II. Order**

Based on the explanation set forth in the Region's June 12 notice provided in accordance with 40 C.F.R. § 124.19(j), the Board dismisses as moot the related Sections IV.C.3 and IV.M of the petition. The Board also grants the Region's request to withdraw the total recoverable lead

limit and dismisses as moot those portions of Section IV.D of the petition that relate to the inclusion of the total recoverable lead limit in the permit. This dismissal in part does not affect the City's right to challenge any changes to the permit arising from the permit modification process. All other issues raised in the petition remain pending before the Board subject to the separately issued Order granting a 30-day stay of the proceedings until August 14, 2014.

So ordered.<sup>3</sup>

Date *July 16, 2015*

  
\_\_\_\_\_  
Mary Kay Lynch  
Judge, Environmental Appeals Board

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<sup>3</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward. 40 C.F.R. § 1.25(e)(1).

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Addressing Partial Withdrawal of Permit Conditions and Dismissing Related Permit Challenges as Moot in the matter of City of Nashua Wastewater Treatment Facility, NPDES Appeal No. 15-06, were sent to the following persons in the manner indicated:


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Dated: JUL 16 2015

  
Annette Duncan  
Secretary