IN RE AVON CUSTOM MIXING SERVICES, INC.

NPDES Appeal No. 02-03

ORDER DENYING REVIEW

Decided August 27, 2002

Syllabus

Petitioner, Avon Custom Mixing Services, Inc. ("Avon"), filed a Petition for Review ("Petition") seeking revision of the testing and monitoring requirements in a final National Pollutant Discharge Elimination System ("NPDES") permit decision issued by U.S. EPA Region I ("Region I"), for the discharge of treated waters into a water body named Trout Brook in Holbrook, Massachusetts. Petitioner asserts that the new testing and monitoring permit requirements are excessive and burdensome and requests a postponement of the permit. Petitioner alleges that its concerns were presented to representatives of the Region and Massachusetts Department of Environmental Protection ("MA DEP") during the data gathering stage of the permit-reissuing process and during the comment period. The Region contends that Petitioner did not submit any written comments on the draft permit during the public comment period.

Held: The Board denies review of the Petition. Petitioner did not submit any probative evidence or written documentation that its concerns were indeed conveyed to the Region during the comment period; accordingly, Petitioner lacks standing under 40 C.F.R. § 124.19. "[F]iling comments" within the meaning of 40 C.F.R. § 124.19 contemplates that Petitioner assure a written objection is registered, either by submitting written comments or by assuring that a written record summarizing any oral comments conveyed during the public comment period is reflected in the administrative record. It is Petitioner's obligation, not the Region's, to demonstrate that Petitioner has satisfied this burden.

Finally, even if Petitioner had demonstrated that its comments were indeed conveyed to the Region during the public comment period, the Board would decline to grant review because Petitioner has not provided any probative evidence showing clear error or an abuse of discretion in the setting of monitoring and testing requirements. Absent such evidence, the Board declines to second-guess the Region's judgment in this matter.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich and Kathie A. Stein.

Opinion of the Board by Judge Stein:

I. *INTRODUCTION*

In a petition dated December 21, 2001, Petitioner, Avon Custom Mixing Services, Inc. ("Avon"), seeks review of the testing and monitoring requirements in a reissued final National Pollutant Discharge Elimination System ("NPDES") permit[1] issued by U.S. EPA Region I ("Region I"), regulating discharges from Avon's facility to a receiving water body named Trout Brook, located in Holbrook, Massachusetts. Petitioner argues that the new testing and monitoring requirements in the permit are excessive and overly burdensome and requests "a postponement of [the] permit for a reasonable period of time." Avon's Petition for Review ("Petition") at 3 (Dec. 21, 2002). In support of its request, Petitioner argues the following: (1) the facility is a small company with only 28 employees, which does not fully use its wastewater treatment plant's capacity;[2] (2) the cost of outside testing services represents a financial burden for the company; (3) the facility has been operating without the new monitoring and testing requirements for a period of twenty-one years without causing any negative effect on the environment; and (4) the facility is expected to hook-up to the town's sewer system in a period of one to five years. *Id.* at 2.

The Region's response is that review should be denied because the issues raised on appeal were not preserved for review. Response to Petition for Review ("Response") at 5-6 (June 17, 2002). That is, neither Avon nor any other person raised these issues during the public comment period. *Id.* The Region further argues that, even assuming that Avon had properly preserved these issues for review, Avon has failed to demonstrate that the Region committed clear error of fact or law or that the requirements involve an exercise of discretion or an important policy consideration that the Board in its discretion should review. *Id.* at 6-9.

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[1] Under the Clean Water Act ("CWA"), persons who discharge pollutants from point sources into waters of the United States must have a permit in order for the discharge to be lawful. *See* CWA § 301, 33 U.S.C. § 1311. The NPDES is the principal permitting program under the CWA. *See* CWA § 402, 33 U.S.C. § 1342.

[2] The facility was originally designed for up to 500 employees. Petition at 2.

II. *FACTUAL AND PROCEDURAL BACKGROUND*

Petitioner operates a manufacturing company in Massachusetts that processes rubber products. The facility has two outfall pipes both discharging into the same water body, Trout Brook. Outfall-001 discharges effluent from a wastewater treatment facility, and Outfall-002 discharges combined non-contact cooling water and storm water. The discharges are authorized under the conditions of NPDES permit number MA0026883, which was originally issued on September 30, 1986, expired on October 30, 1991, and administratively extended pursuant to 40 C.F.R. § 122.6.[3] *See* Response Exhibit ("R Ex") 1; Administrative Record ("AR") I.4.

In July 1992, Petitioner applied for renewal of its existing NPDES permit. *See* AR II.2. On September 28, 2001, Region I and the Massachusetts Department of Environmental Protection ("MA DEP") issued a joint public notice of the draft permit for Avon's discharges and sought public comments on the draft permit.[4] R Ex 2, AR I.2. The draft permit incorporated new discharge and monitoring limitations such as the monitoring requirements shown below:

(1) For Outfall-001:

(a) Daily monitoring requirements for pH and dissolved oxygen;

(b) Weekly monitoring requirements for BOD_5, total suspended solids, fecal coliform bacteria, and total ammonia nitrogen;

(c) Monthly monitoring requirements for phosphorus; and

(d) Quarterly monitoring requirements for total copper and whole effluent toxicity; and

(2) For Outfall-002:

(a) Monthly monitoring requirements for: total suspended solids, and oil and grease; and

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[3] Section 122.6 allows an expiring federal permit to continue in effect after its expiration date in circumstances where, as here, an application for permit renewal has been timely filed and is pending Agency review. 40 C.F.R. § 122.6.

[4] In the State of Massachusetts, Region I administers the NPDES permit program. Response at 2.

(b) Quarterly monitoring requirements for zinc.

Compare R Ex 1, AR I.4 (Final Permit 1986) *with* R Ex 3, AR I.3 (Draft permit 2001).

The public comment period provided in accordance with 40 C.F.R. § 124.10 closed on October 29, 2001. According to Region I, *see* Response at 3, and our review of the Certified Index to the Administrative Record, no written comments on the draft permit or requests for public hearing were submitted by Petitioner or any other person.

On November 13, 2001, MA DEP certified the draft permit in accordance with section 401(a) of the CWA, 33 U.S.C. § 1341(a).[5] *See* R Ex 4, AR III.1. Region I and MA DEP proceeded promptly thereafter to issue a joint final NPDES permit decision on November 19, 2001. *See* R Ex 5, AR I.1. The final permit decision essentially incorporates all the discharge limitations and monitoring requirements included in the draft permit. *Compare* R Ex 3, AR I.3 (Draft Permit 2001) *with* REx 5, AR I.1 (Final Permit Decision 2001).

By letter dated December 21, 2001, Petitioner seeks Board review, contesting the inclusion of the new monitoring and testing permit requirements.[6] *See* Petition. The Region filed its response with the Board on June 17, 2002.[7]

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[5] Section 401(a)(1) of the CWA requires all NPDES permit applicants to obtain a certification from the appropriate state agency indicating that the permit will comply with all applicable federal effluent limitations and state water quality standards. *See* CWA § 401(a)(1), 33 U.S.C. § 1341(a)(1). The regulatory provisions pertaining to state certification provide that EPA may not issue a permit until a certification is granted or waived by the state in which the discharge originates. 40 C.F.R. § 124.53(a).

[6] The petition was received by the Board on January 22, 2002, approximately one month after it was mailed by certified mail to the Board's mailing address. Notably, the Region does not seek dismissal on timeliness grounds. The Region instead notes in its response that the delay between the mailing of the petition and its receipt by the Board appears to be attributable to the rerouting of Washington D.C. mail in response to anthrax contamination concerns. *See* Response at 3 n.3. The Board has indeed experienced delays in mail delivery due to the new sterilization procedure applied to all U.S. Postal Service mail delivered to the federal government, and, as noted by the Region in its response, this seems to be the case here. Under these special circumstances, the Board will consider the petition to have been timely filed. *See, e.g., In re Minergy Detroit, LL.C.*, PSD Appeal Nos. 02-01 & 02-02, at 1 n.2, (EAB, March 1, 2002) (Order Denying Review) (petition considered timely filed; delay in petition reaching the Board attributable to anthrax contamination concerns).

[7] On March 12, 2002, the Board granted Region I and Avon's joint request to extend the Region's deadline to file a response to Avon's petition, and allow time for the parties to engage in negotiations. The order granted the parties' request until June 17, 2002. According to the Region's response, the parties discussed settlement options but were unable to reach an agreement. Response at 1 n.1.

For the reasons stated below, Petitioner's request for review is denied.

III. *DISCUSSION*

A. *Standard of Review*

In appeals under 40 C.F.R. § 124.19(a), the Board will not grant review unless it appears from the petition that the permit condition in question is based on a clearly erroneous finding of fact or conclusion of law, or involves an exercise of discretion or an important policy consideration that the Board should review in its discretion. 40 C.F.R. § 124.19(a); *see In re Westborough and Westborough Treatment Plant Board*, 10 E.A.D. 297, 303 (EAB 2002); *In re City of Moscow*, 10 E.A.D. 135, 140 (EAB 2001). While the Board has broad power to review decisions under section 124.19, it exercises such authority sparingly, recognizing that Agency policy favors final adjudication of most permits at the Regional level. 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *see Westborough*, 10 E.A.D. at 304; *City of Moscow*, 10 E.A.D. at 141; *In re New England Plating*, 9 E.A.D. 726, 729-30 (EAB 2001).

On appeal to the Board, the petitioner bears the burden of demonstrating that review is warranted. 40 C.F.R. § 124.19(a)(1), (2); *see In re AES Puerto Rico L.P.*, 8 E.A.D. 324, 328 (EAB 1999), *aff'd sub nom. Sur Contra La Contaminación v. EPA*, 202 F.3d 443 (1st Cir. 2000); *In re Hawaii Elec. Light Co.*, 8 E.A.D. 66, 71 (EAB 1998). Although the Board broadly construes petitions that are filed without the apparent aid of legal counsel, like the petition here, the burden of demonstrating that review is warranted nonetheless rests with the petitioner challenging the permit decision. *New England Plating,* 9 E.A.D. at 730; *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 249 (EAB 1999); *In re Envotech, L.P.*, 6 E.A.D. 260, 268 (EAB 1996).

Before addressing the merits of the petition, we need to first determine whether the Petitioner has complied with the threshold procedural requirements of 40 C.F.R. part 124.

B. *Threshold Requirements*

Standing to appeal a final permit determination is limited under section 124.19 to those persons who participated in the permit process leading up to the permit decision, either by filing comments on the draft permit or by participating in the public hearing. 40 C.F.R. § 124.19(a). A person who failed to file timely comments or participate in the public hearing on the draft permit may under certain circumstances still have the opportunity to appeal. Such opportunity is, however, restricted to instances where there have been changes from the draft to the final permit decision. 40 C.F.R. § 124.19(a); *In re American Soda, LLP*,

9 E.A.D. 280, 288-89 (EAB 2000); *In re Envotech, L.P.,* 6 E.A.D. 260, 266-267 (EAB 1996); *In re Beckman Prod. Serv.,* 5 E.A.D. 10, 16 (EAB 1994); *In re Avery Lake Prop. Owners Ass'n*, 4 E.A.D. 251, 253 (EAB 1992).

Furthermore, a petitioner with standing may only raise issues that have been preserved for review. That is, a petitioner seeking review must demonstrate to the Board, inter alia, that any issues raised in the petition were raised by someone during the public comment, to the extent required by these regulations. 40 C.F.R. § 124.19(a); *see In re City of Moscow, Idaho*, 10 E.A.D. at 141; *In re City of Phoenix, Arizona*, 9 E.A.D. 515, 524 (EAB 2000), *appeal dismissed by stipulation*, No. 01-70263 (9th Cir. Mar. 21, 2002). The Board has consistently declined to review issues or arguments in petitions that fail to satisfy this basic requirement. *Id.*; *see In re Rockgen Energy Center*, 8 E.A.D. 536 (EAB 1999).

Participation during the comment period must conform with the requirements of section 124.13. *City of Moscow*, 10 E.A.D. at 141; *In re New England Plating,* 9 E.A.D. 726, 731 (EAB 2001); *City of Phoenix*, 9 E.A.D. at 524. Under 40 C.F.R. § 124.13, "[a]ll persons, including applicants, who believe any condition of a draft permit is inappropriate * * * must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period * * *." 40 C.F.R. § 124.13; *see In re Florida Pulp & Paper Ass'n*, 6 E.A.D. 49, 53 (EAB 1995). Only those issues and arguments raised during the comment period can form the basis for an appeal before the Board (except to the extent that issues or arguments were not reasonably ascertainable). *New England Plating,* 9 E.A.D. 731.

In the instant case, Petitioner challenges the new testing and monitoring conditions that were added to the renewed permit. Petitioner's basic challenge is "that the new testing and monitoring requirements mandated by the new permit are excessive and overly burdensome." Petition at 1. Petitioner does not fundamentally question the Region's rationale in establishing the new discharge limitations and monitoring requirements, nor does Petitioner question the legal or factual correctness of the new permit conditions. In support of its challenge, Petitioner raises four arguments, cited previously, explaining why it believes the new permit conditions should be set aside.[8] According to Petitioner, these arguments were raised "[d]uring the data gathering stage of the permit reissuing process." Petition at 2. Petitioner also asserts that these same arguments were presented to MA DEP and regional representatives on several occasions during the comment period. *Id.* at 3.

The Region contends that Avon did not submit any written comments on the draft permit during the public comment period, nor did any other person sub-

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[8] *See* Section I. Introduction *supra*.

mit comments. Response at 5. Accordingly, the Region reasons, Avon's failure to comment on the draft permit is fatal to its appeal. *Id.* We agree.

The Board has emphasized that: "person[s] making * * * comments [on a draft permit] must *register* the objections with the permit issuer during the public comment period" if petitioner wishes to preserve the right to contest the permit decision. *In re City of Phoenix, Arizona Squaw Peak & Deer Valley Water Treatment Plants*, 9 E.A.D. 515, 529 n.21 (EAB 2000), *appeal dismissed by stipulation*,No. 01-70263 (9th Cir. Mar. 21, 2002) (emphasis added). In this regard, the rules contemplate that comments on the draft permit, other than those made orally at a public hearing,[9] are to be submitted in writing. Section 124.11 provides in pertinent part: "During the public comment period provided under § 124.10, any interested person may submit *written* comments on the draft permit * * *." 40 C.F.R. § 124.11 (emphasis added).

Moreover, consistent with the principle that permit decisions are to be made based on the administrative record, *see* 40 C.F.R. § 124.18, "[i]f a comment is submitted orally to the Region at a meeting [during the comment period] that is not being taped or transcribed, it must still be *summarized in writing* and submitted to the Region before it becomes part of the administrative record, unless the Region itself documents the comment for the record * * *." *In re Masonite Corp.*, 5 E.A.D. 551, 560 n.10 (EAB 1994) (emphasis added) (considering issue preserved for appeal on the basis of a Regional memorandum that was made part of the administrative record).[10] Accordingly, in our view, at a minimum, "fil[ing] comments" within the meaning of the standing requirement of 40 C.F.R. § 124.19 contemplates that Petitioner shall assure a written objection is registered,[11] either by submitting written comments or by assuring that a written record summarizing any oral comments conveyed during the public comment period is reflected in the administrative record. It is Petitioner's obligation not the Region's to demonstrate that Petitioner has satisfied this burden,[12] and thus has standing under 40 C.F.R. § 124.19. If Petitioner does not make written comments, it runs the risk that the

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[9] The rules in 40 C.F.R. § 124.12 provide for the submission of oral (and written) statements during public hearings. 40 C.F.R. § 124.12(c). No public hearing was conducted in this case, however.

[10] As we explained in *Masonite*, in the case of a public hearing, it is the "tape or transcript" of oral comments made at a public hearing that becomes part of the administrative record, *see* 40 C.F.R. § 124.18(b)(2), not the oral comments themselves. *Masonite Corp.*, 5 E.A.D. at 560 n.10.

[11] Section 124.19 of 40 C.F.R. permits any appeal by a person who "filed comments" on the draft permit. Section 124.19 also confers standing upon those who "participated in the public hearing," i.e., by making oral or written statements in accordance with 40 C.F.R. § 124.12.

[12] Under section 124.19 "the petition shall include a demonstration that any issues being raised were raised during the public comment period * * *." 40 C.F.R. § 124.19(a). *See In re Phelps Dodge Corp.*, 10 E.A.D. 460, 519-20 (EAB 2002).

administrative record may fail to reflect any comments conveyed orally or may not capture fully or accurately an objection Petitioner thought it had made during a meeting or conversation.[13]

Against this framework, we now evaluate Petitioner's claims that it raised these concerns during the comment period. Significantly, Petitioner has not submitted any probative evidence or written documentation that its concerns were conveyed to the Region during the comment period, or that it provided the Region with a summarized written version of its concerns. If Avon made any comments, as it claims it did, it must have done so orally without having sent the Region a written record of its concerns, for Avon has failed to provide any documentation to prove otherwise. As already stated, it is Petitioner who bears the burden of demonstrating that review is warranted. In the absence of any credible documentation showing that comments were indeed provided to the Region during the comment period, we are left with no alternative but to deny review on procedural grounds.

Second, we have stated in the past that comments must be submitted *during* the comment period. *In re City of Phoenix*, 9 E.A.D. 515, 524 (EAB 2000), *appeal dismissed by stipulation*, No. 01-70263 (9th Cir. Mar. 21, 2002). That is, within the interval of time between the beginning and end of the public comment period, not before, not after.[14] *Id*. Therefore, none of Avon's alleged comments during the data gathering stage of the permit are "comments on the draft permit." *See id.* at 23 ("The phrase 'comment on a draft permit' has a distinct and formal meaning. It refers to comments made *during* a comment period set aside for the permit applicant and other interested persons to comment on a draft permit proposed for issuance by the permit issuer.").

Finally, this is not a case where there have been changes between the draft and final permit.[15] The contested permit limitations were contained in the draft

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[13] By its decision today, the Board does not intend to impose additional obligations on the Region, beyond those otherwise required by law, to summarize comments conveyed orally and to place them in the administrative record.

[14] As we clarified in *City of Phoenix*, this is not to say that comments may not be made at an earlier date; it just means that to put the permit issuer on formal notice of any continuing objections to the terms of a draft permit, the person making the comments must register the objections with the permit issuer *during the public comment period* in order to preserve the right to contest any decision by the permit issuer not to incorporate the person's comments. *City of Phoenix,* 9 E.A.D. at 529 n.24.

[15] As previously stated, a person who has not "filed comments" on the draft permit may petition for review with respect to issues concerning provisions which were changed between the draft and final permit. *See* 40 C.F.R. § 124.19(a); *In re American Soda, LLP*, 9 E.A.D. 280, 288-89 (EAB 2000).

permit.[16]

Because the record before us contains no documentation that Avon submitted written comments on the draft permit, review is denied.[17]

Although we are denying review on procedural grounds, even if Avon had demonstrated that its comments were indeed conveyed to the Region during the public comment period, we would have not granted review. In short, Petitioner has not demonstrated that the Region's decision to include the contested permit conditions is based on a clear error of fact or law, nor has Petitioner presented any arguments to persuade us that this case involves important policy considerations. In essence, Avon's arguments as to why the Board should grant review are general, unsubstantiated, and in part inapposite to the considerations of the CWA.

We have held in the past that to warrant review, allegations must be specific and substantiated. *See In re Hadson Power 14 Buena Vista*, 4 E.A.D. 258, 294 n.54 (EAB 1992); *In re Terra Energy LTD.*, 4 E.A.D. 159, 161 (EAB 1992). This principle is especially true where, as here, a petitioner challenges technical judgments made by the permit-writing authority. *See In re Westborough and Westborough Treatment Plant Board*, 10 E.A.D. 297, 311 (EAB 2002); *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 404 (EAB 1997). The Petitioner in this case has failed to meet this core principle. Avon has not provided any probative evidence showing clear error or an abuse of discretion in the setting of monitoring and testing requirements.

The Board has emphasized that monitoring data play a crucial role in fulfilling the objectives of the CWA and its implementing regulations. *In re City of*

[16] In explaining why the new monitoring and testing permit requirements should not apply to Avon's facility, Petitioner indicates that the town of Holbrook has approved a plan to fund the hook-up of Avon's facility to the town's sewer system. Petition at 2. According to Petitioner, the connection should be completed within one to five years. *Id.* While Petitioner asserts that this is new information, it has not provided any documentation indicating that this argument in support of the issue it raises on appeal was not "reasonably available" during the comment period. *See* 40 C.F.R. § 124.13; *see, e.g., In re Phelps Dodge Corp.*, 10 E.A.D. 460, 519-20 (EAB 2002) ("persons seeking review of a permit must *demonstrate* that any issues or *arguments* raised on appeal were previously raised during the public comment period on the draft permit, *or were not reasonably ascertainable* at that time") (citing 40 C.F.R. §§ 124.13, .19(a)) (emphasis added).

Aside from Petitioner's bare allegation that the hook-up to Holbrook's sewer system will take place sometime within the next five years, the record before us lacks any information in terms of the actual likelihood or specific timing of this project. In any event, there were no changes between the terms of the draft and final permit. Therefore, for the foregoing reasons, Petitioner has not meet its burden to show that we should review this argument on the merits. *See* 40 C.F.R. §§ 124.13, .19.

[17] *See, e.g., American Soda*, 9 E.A.D. at 288-89 (finding petitioner lacked standing where petitioner failed to demonstrate that it submitted written comments or participated in the public hearing; except as to issues involving changes between draft and final permits).

Moscow, 10 E.A.D. 135, 170 (EAB 2001). Sections 308 and 402 of the CWA bestow upon the Administrator broad authority to require owners and operators of point sources to establish, inter alia, monitoring methods and to prescribe permit conditions for data collection and reporting. CWA §§ 308(a)(A), 402(a)(2); 33 U.S.C. §§ 1318(a)(A), 1342(a)(2); *see also City of Moscow*, 10 E.A.D. 661, 672 (EAB 2001). Moreover, where the monitoring relates to maintaining State water quality standards, as is the case here (*see* Response at 6-7),[18] nothing in the CWA or the implementing regulations constrain the Region's authority to include monitoring provisions. *In re Town of Ashland Wastewater Treatment Facility*, 9 E.A.D. 661 (EAB 2001). Given the importance of monitoring to the integrity of NPDES permits, and the broad authority the CWA confers on the Region to impose monitoring requirements in NPDES permits, it does not strike us as unreasonable that the Region has decided to include new monitoring requirements in the reissued permit.

The administrative record contains ample support for the Region's decision to include monitoring and testing requirements. The Region explains that the monitoring requirements are necessary to yield data representative of the discharge and to ensure compliance with effluent limits. Response at 7; R Ex 2, AR I.2. According to the Region, there is an increase in monitoring requirements because (1) the new permit contains water quality-based limits on pollutants not limited in the previous permit, and (2) the new permit increases the monitoring frequency for pollutants limited in the previous permit. Response at 8. The monitoring frequencies for the new limits, the Region contends, are reasonable since little data have been collected for these pollutants and additional data will be needed to detect noncompliance and assess treatment efficiency. *Id.*; R Ex 2, AR I.2. The increased monitoring for pollutants limited in the previous permit, the Region explains, is reasonable because there is no significant dilution in the receiving water body (Trout Brook). Response at 8; R Ex 2 at 5, AR I.2. Absent any evidence that the Region abused its discretion in setting the new testing and monitoring requirements,[19] we decline to second-guess the Region's judgment in this

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[18] The CWA requires NPDES permits to contain limitations necessary to meet water quality standards. *See* CWA §§ 301(b)(1)(c), 402(a)(2); 33 U.S.C. §§ 1311(b)(1)(c), 1342(a)(2). In the instant case, the Region made the determination that the new permit limits were necessary to meet Massachusetts water quality standards. *See* R Ex 2, AR I.2. Therefore, the Region was required to set effluent limits on Avon's discharges to ensure compliance with the applicable water quality standards. *See, e.g., In re Town of Hopedale*, NPDES Appeal No. 00-04, at 23 (EAB, Feb. 13, 2001) (Order Denying Review); *In re Massachusetts Correctional Inst.-Bridgewater*, NPDES Appeal No. 00-9, at 9 (EAB, Oct. 16, 2000)(Order Dismissing Petition for Review). As previously explained, Petitioner does not object to the new effluent limits per se, Petitioner challenges instead the monitoring and testing requirements.

[19] Moreover, given that any hook-up to the town's sewer system might not occur for up to five years, if then, we do not believe it is reasonable for Petitioner to expect the Region would forgo the imposition of monitoring and testing permit conditions for that length of time. *See supra* note 16. By

Continued

regard.

IV. *CONCLUSION*

For all the foregoing reasons, Avon's petition for review is hereby denied.

So ordered.

(continued)
statute and regulation, the maximum term of any NPDES permit cannot exceed five years. CWA § 402(b)(1)(B), 33 U.S.C. § 1342(b)(1)(B); 40 C.F.R. § 122.46(a).