

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

	)	
In the Matter of:	)	
	)	
City of Nashua	)	
Wastewater Treatment Facility	)	NPDES Appeal No. 15-06
	)	
NPDES Permit No. NH0100170	)	
	)	

**ASSENTED-TO MOTION TO WITHDRAW A PORTION OF THE PERMIT AND  
TO PARTIALLY DISMISS THE PETITION FOR REVIEW AS MOOT**

EPA Region 1 respectfully requests that the Environmental Appeals Board (“Board”): (i) grant leave to withdraw the Total Recoverable Lead limit in the final National Pollutant Discharge Elimination System (“NPDES”) permit issued by Region 1 to the City of Nashua, New Hampshire (“City”) on March 6, 2015, and (ii) dismiss as moot the City’s corresponding challenge to that limit, as set forth in its April 13, 2015 Petition for Review.

**Background and Requested Relief**

In an effort to narrow the issues on appeal, the Region on June 12, 2015, issued notice to interested parties pursuant to 40 C.F.R. § 124.19(j) that it would be commencing permit modification proceedings to resolve two issues raised in the City’s Petition. *See* Letter dated June 12, 2015 from H. Curtis Spalding, Regional Administrator, EPA Region 1, to Lisa Fateaux, City of Nashua, and Eurika Durr, Clerk, Environmental Appeals Board, re Notice of Partial Withdrawal Pursuant to 40 C.F.R. § 124.19(j); Assented-to Motion to Partially Dismiss the Petition as Moot (June 12, 2015).

If the Regional Administrator wishes to withdraw a permit condition more than thirty days after filing its response to a petition for review, as is the case here, it may not act unilaterally under 40 C.F.R. § 122.19(j), but must instead seek leave from the Board. 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). Upon review of the administrative record, including the effluent data presented in the Petition, and following discussion with the City, the Region has determined that it would be appropriate to withdraw the Final Permit's effluent limitation for Total Recoverable Lead for lack of reasonable potential. *See* Final Permit, Part I.A.1. Accordingly, the Region respectfully requests that the Board grant the Region leave to withdraw the Final Permit's lead limitation and to address the withdrawal in the forthcoming modification proceedings.

The Region also requests that the Board partially dismiss as moot Section IV.D of the Petition insofar as it relates to the inclusion of the Total Recoverable Lead limit in the permit. *See In re City of Keene Wastewater Treatment Facility*, NPDES Appeal No. 07-18 (EAB Dec. 5, 2007) (Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot). The Region has contacted Nashua regarding this motion and represents to the Board that the City assents to this motion. *See* 40 C.F.R. § 124.19(f)(2).

Dated: July 7, 2015

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Assented-to Motion to Withdraw a Portion of the Permit and to Partially Dismiss the Petition as Moot, in the matter of Nashua Wastewater Treatment Facility, NPDES Appeal No. 15-06, was served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

By Electronic Mail and U.S. Mail:

Sherilyn Burnett Young, Esq.  
Marcia Brown, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, NH 03302-1500

Dated: July 7, 2015

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Samir Bukhari