



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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**VIA ELECTRONIC FILING AND CERTIFIED MAIL**

May 13, 2015

Ms. Lisa M. Fauteaux, Director  
Division of Public Works  
9 Riverside Street  
Nashua, New Hampshire 03062

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

**RE: City of Nashua Wastewater Treatment Facility  
NPDES Permit Appeal No. 15-06; NPDES Permit No. NH0100170**

Dear Ms. Fauteaux and Ms. Durr:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, Region 1 of the United States Environmental Protection Agency ("EPA") is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System ("NPDES") Permit No. NH0100170. EPA reissued that permit to the City of Nashua on March 6, 2015.

The City timely petitioned EPA's Environmental Appeals Board ("EAB") for review of the permit on April 13, 2015. The City contested the: (1) phosphorus effluent limit for Outfall 001 (Part I.A.1); (2) lead effluent limit for Outfall 001 (Part I.A.1); (3) copper effluent limit for Outfall 001 (Part I.A.1); (4) total residual chlorine limits for Outfalls 001 and 014 (Parts I.A.1 and I.B.5.b); (5) sample collection location requirements for compliance with the POTW Treatment Plant effluent limits for BOD<sub>5</sub>, TSS, and pH (Part I.A.1 footnote 3); (6) monitoring requirements for BOD<sub>5</sub>, TSS, and flow at internal Outfall 001W (Part I.B.5.a); (7) monitoring requirements for BOD<sub>5</sub>, TSS, and flow at the Screening and Disinfection Facility (Part I.B.5.b); (8) definition of dry weather (Parts I.A.4 and I.B.2.d); (9) condition prohibiting the discharges from causing a violation of water quality standards of the receiving water (Part I.B.1.d); and (10) four requirements regarding Nine Minimum Controls Annual Reporting Requirements related to CSOs (Part I.B.3.e(3), (4), (6), and (7)). These conditions are collectively referred to as the "Contested Conditions."

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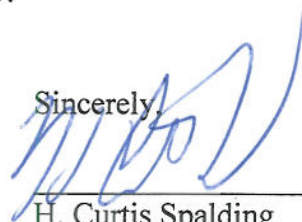
When a permit appeal is filed, EPA must issue a notification identifying which permit conditions are stayed as a result of the appeal and which permit conditions will go into effect. *See* 40 C.F.R. §§ 124.16(a)(2)(i) and (ii). While a permit appeal is pending, the contested permit conditions are stayed. *See* 40 C.F.R. § 124.16(a)(1). Uncontested permit conditions that are "inseverable" from contested conditions are also considered to be contested and are stayed. *See* 40 C.F.R. §§ 124.60(b)(4), 124.16(a)(2)(i). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. *See* 40 C.F.R. §§ 124.16(a)(2)(i) and (ii).

EPA is notifying you that the Contested Conditions are stayed pending final agency action. *See* 40 C.F.R. §§ 124.16(a)(1) and 124.19(l). Furthermore, EPA has determined that all other conditions of the permit are uncontested and severable, and accordingly will become fully effective and enforceable thirty (30) days from receipt of this notice. The Region disagrees with the assertion made by the City in its Petition that *all* remaining conditions of the Permit are inseverable and are therefore also stayed. EPA finds no merit in this assertion, which was not accompanied by any analysis or substantiation. In arriving at this determination, EPA has carefully reviewed the Final Permit and the Petition and has not identified any rationale to justify the City's claim that the uncontested conditions of the Permit should be deemed contested on the grounds of inseverability. To the contrary, it appears evident that these permit condition will have to be met regardless of the outcome of the appeal. As an example, there does not appear to be any reason to consider permit conditions regarding Unauthorized Discharges (Part I.D), the Industrial Pretreatment Program (Part I.G), Sludge (Part I.H), or Monitoring and Reporting (Part I.I) as inseverable from the Contested Conditions. Other clearly severable conditions include, but are not necessarily limited to, the permit's *E. coli* and Whole Effluent Toxicity effluent limits (Parts I.A.1, I.B.1 and I.B.5.b).

Although EPA has concluded that the uncontested portions of the permit are severable, EPA will consider any additional information and analysis to demonstrate that uncontested conditions are in fact inseverable. This information must be received within fourteen (14) days of receipt of this notice. Upon consideration of that submission, EPA will in writing either reaffirm this determination, or issue a revised determination if warranted, prior to the date that the uncontested permit conditions are scheduled to become effective.

If you have any questions regarding this notice, please contact Samir Bukhari of the Office of Regional Counsel at (617) 918-1095.

Sincerely,



H. Curtis Spalding  
Regional Administrator  
US EPA-Region 1

cc: Sherilyn Burnett Young, Esq.  
Marcia Brown, Esq.