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April 13, 2015

VIA EAB eFILING SYSTEM

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
Washington, DC 20460-0001

Re: City of Nashua-Wastewater Treatment Facility
Petition for Review of NPDES Permit No. NH0100170

Dear Ms. Durr:

Attached please find for filing, the City of Nashua's Petition for Review of NPDES Permit No. NH0100170 issued to the Nashua Wastewater Treatment Facility. The Environmental Protection Agency, Region 1, issued this permit on March 10, 2015. It was received by certified mail on March 12, 2015, therefore, the appeal deadline, pursuant to 40 C.F.R. § 124.20(c), is April 13, 2015.

The petition has been prepared in compliance with the formatting and length requirements contained in the Environmental Appeals Board's Practice Manual.

Thank you for your assistance with this filing.

Very truly yours,

Sherry Young

Sherilyn Burnett Young

cc: Samir Bukhari, Assistant Regional Counsel, Environmental Protection Agency, Region I
Lisa Fauteux, Director of Public Works, City of Nashua

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

In re:	)	
City of Nashua, Division of Public Works	)	NPDES Appeal No. 15-_____
NPDES Permit No. NH0100170	)	

PETITION FOR REVIEW OF CITY OF NASHUA WASTEWATER TREATMENT FACILITY NPDES PERMIT ISSUED BY REGION 1

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April 13, 2015

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I. INTRODUCTION

Pursuant to 40 C.F.R §124.19(a), the City of Nashua, New Hampshire (the "City" or "Nashua"), through its undersigned representatives, respectfully submits this Petition for Review ("Petition") of the National Pollutant Discharge Elimination System ("NPDES") Permit No. NH0100170 (the "Permit,") dated March 10, 2015, issued by the Environmental Protection Agency ("EPA"), Region 1 ("Region"). See, Attachment 3, 2015 Permit.

As more fully noted in the Issues Presented and Argument sections below, certain conditions and effluent limits set forth in the Permit are based on one or more findings of fact or conclusions of law which are clearly erroneous, involve an abuse of discretion, or implicate important policy considerations. The Permit imposes new conditions and limits that are overly burdensome, not required by law, exceed the Region's authority, or are based on clearly erroneous findings of fact or conclusions of law, or both. Additionally, several of the Region's responses in the record fail to meaningfully acknowledge or address significant comments and concerns raised by the Petitioner, as required by 40 C.F.R. § 124.17(a)(2). *In re San Jacinto River Authority,* 14 E.A.D. 688, 92 (EAB 2010); and *In re Wash. Aqueduct Water Supply Sys.,* 11 E.A.D. 565, 585-86 (EAB 2004). The Region also failed to provide the Petitioner with fair notice of its new compliance obligations in certain material respects. *D.C. Water and Sewer Auth.* at *112-114, citing *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 28-29 (EAB, Sept. 27, 2006); *In re Amoco Oil Co.*, 4 E.A.D. 954, 981 (EAB 1993); *In re GSX Servs. of S.C., Inc.*, 4 E.A.D. 451, 467 (EAB 1992). Thus, the City of Nashua is compelled to contest the Permit and its various conditions and limits and respectfully requests the Environmental Appeals Board ("EAB") to grant review of this petition.

II. THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, to wit:

A. Petitioner has standing to petition for review because it submitted comments on the draft permit transmitted to the Petitioner. *See* 40 C.F.R. § 124.19(a). See Attachment 5, November 18, 2013 letter from City of Nashua to Mr. Ken Moraff of Region 1.

B. The issues raised by the Petitioner in its petition were all raised during the public comment period as noted in citations below. Therefore, they were preserved for review. The City of Manchester also submitted comments on the draft permit. See Attachment 6. November 14, 2013 letter from City of Manchester to Mr. Ken Moraff of Region 1. Also, certain other arguments are included below that could not have been reasonably ascertained at the time the Petitioner submitted comments on the Draft Permit because the issues were first raised by the Region in the Response to Comments (Attachment 4), or because additional information supporting the City's position has been developed since then.

C. The Petition is timely filed. 40 C.F.R. § 124.19(a) and 20. The notice of the issuance of the Final Permit (Permit) is dated March 10, 2015. The Petitioner received actual notice of the Permit on March 12, 2015. The thirtieth day after the day following receipt of the notice, April 12, 2015, falls on a weekend and thus this Petition is filed on the first working day after the 30-day deadline, April 13, 2015. The Petition for Review complies with the Board's Practice Manual.

III. FACTUAL AND STATUTORY BACKGROUND

The Petitioner operates a wastewater treatment facility in Nashua, New Hampshire known as the Nashua Wastewater Treatment Facility (NWTF), which is subject to regulation

under the Clean Water Act. The NWTF provides full secondary treatment to an average design flow of 16 million gallons per day (MGD) and a peak flow of 32 MGD, although its average daily flow is 11 MGD. The facility also receives 375,000 gallons of septage each year.

The NWTF discharges treated effluent to the Merrimack River through Outfall-001. During wet weather events, the NWTF provides treatment for up to 50 MGD. With the addition of other facilities described below, the NWTF can treat up to 110 MGD.

Nashua has nine CSOs. Four of the CSOs discharge to the Nashua River (CSOs 006-009) and five of the CSOs discharge to the Merrimack River (CSOs 002-005 and 014). In 1999, the City was under an administrative order from the Region to separate its sewer and stormwater by 2019. The City of Nashua estimated separating the remaining combined sewer-stormwater mains would cost $250 million. In lieu of a complete separation program, the Region approved Nashua's pursuit of a wet weather pollution control program. Pursuant to that program, between 1999 and 2006, the City of Nashua spent approximately $24.1 million and separated 8.97 miles of sewers. Approximately 75% of its sewers are now separated from the stormwater collection system. In a 2005 Consent Decree with the Region, amended in 2009, the City of Nashua committed to constructing a number of wet weather flow projects to reduce and eliminate overflows and divert stormwater to either storage or treatment. The EPA-approved projects completed to date total $69.2 million and include:

1. $32.38 million high-rate Wet Weather Flow Treatment Facility;
2. $19.78 million Screening and Disinfection Facility;
3. $5.76 million 40,000 gallon Storage Facility at CSO-004 and pipe lining; and
4. $5.08 million for Sewer Separation.

The high-rate WWFTF is designed to eliminate untreated overflows from CSO-003 and CSO-004 and bring wet weather discharges from these CSOs into compliance with the requirements of state and federal water quality standards. The WWFTF is located adjacent to the

NWTF. It is capable of handling up to 60 MGD of wet weather flows (stormwater and wastewater). It is this facility that increases NWTF's capacity to 110 MGD. Pursuant to the High Flow Management Plan, when flow rates exceed 50 MGD, NWTF staff lower the main influent gate at the NWTF, diverting flows to the WWFTF. The WWFTF treatment uses the Actiflo system of treatment. The effluent from the WWFTF is blended with the secondary effluent at the chlorine contact chamber at the NWTF. The flow then discharges at Outfall-001.

The Screening and Disinfection Facility (SDF) is located approximately 1.25 miles from the NWTF. The SDF is designed to eliminate untreated overflows from CSO-005 and CSO-006 (now combined and referred to as CSO-014). The SDF meets the Nine Minimum Controls (NMC) guidance and was designed in accordance with the City's Consent Order requirements for the treatment of E.coli bacteria. It is capable of screening and disinfecting 91 MGD of peak combined sewage flow and has an internal storage capacity of one million gallons. During a storm event, combined sewage enters the facility where it is screened from floatables material entering the facility. Sodium Hypochlorite is then added to the influent flow for disinfection purposes. Up to 1 million gallons of combined sewage flow can be accumulated (stored) within the facility before an overflow discharge will occur to the Merrimack River via the facility's outfall pipe CSO-014. Should the facility exceed its storage capacity of 1 million gallons and overflow to the Merrimack River, the flow is first treated with Sodium Bisulfite to remove the chlorine residual prior to treated overflows entering the River. Following a wet weather event, the remaining storage contents of the SDF (up to 1 million gallons) is returned to the NWTF for treatment. Because of the high stored volume of the SDF, the dilute flow can adversely affect the NWTF's 85% removal requirement of TSS and BOD for longer than 24 hours after a wet weather event.

The City has a Long Term Control Plan (LTCP), High Flow Management Plan, Post Construction Monitoring Plan, Long-Term Preventative Maintenance Program, to manage stormwater, minimize adverse impacts of stormwater flows on the NWTF, and eliminate overflows. Over the next six years, the City of Nashua intends to spend up to another $30 million on additional capital improvements: separate additional sewers and stormwater collection systems, upgrade aging aeration blowers, tanks, grit systems, clarifiers, and dewatering equipment. In addition to facility and system improvements, the City also invests in green infrastructure projects such as: rain gardens, stormwater treatment units, drainage swales, and the use of porous pavement. It also has enacted stormwater ordinances to reduce stormwater entering the collection system.

The City's current sewer rate is $27.77 per quarter for .0625-inch service plus $9.26 per month. The rate increased by 10% in 2011 and 10% in 2013, and is expected to increase by 10 percent in 2015, 10% in 2016, 10% in 2017, 5% in 2018, and 5% in 2019.

The City's last NPDES permit was issued May 31, 2000, expired on May 31, 2005, and was administratively continued by the Region during its review of the City's Permit renewal application. On July 23, 2013, the Region publicly noticed the Draft Permit (Attachment 1) and solicited public comments from July 23, 2013 through November 18, 2013. The City of Nashua filed comments dated November 18, 2013 (Attachment 5). The City of Manchester filed comments dated November 14, 2013 (Attachment 6). The Region responded to all comments on March 10, 2015 (Attachment 4) and issued the Permit (Attachment 3). The Region also included a copy of the State of New Hampshire Department of Environmental Services' (NHDES) Section 401 Water Quality Certification which had been issued to the Region on January 22,

2015 for the draft permit. The NHDES has not yet adopted the final Permit pursuant to NH RSA 485-A:13.

IV. ARGUMENT

A. Standard of Review

Pursuant to 40 C.F.R. §124.19(a), the Board should grant review of the Region's decision on an NPDES Permit when the Petitioner establishes that the permit conditions in question are: 1) based on a clearly erroneous finding of fact or conclusion of law, or 2) involves an exercise of discretion on important policy considerations that the Board determines warrants review.

To the extent that the permit conditions in question are water quality-based requirements, the Region must satisfy the requirement that the discharge from the NWTF "will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard." 40 C.F.R. §124.44(d)(i).

B. The Region's 7Q10 Derivation and Dilution Factor Calculations are Clearly Erroneous and Involve an Arbitrary Exercise of Discretion on Important Policy Considerations

Please see, Derivation of 7Q10, Comment B.1 (pages 3-4 of 80)

1. Derivation of the 7Q10

EPA's approach to calculating the 7Q10 flow for the Merrimack River at the NWTF's Outfall 001 is contrary to the methodology recommended in EPA's Guidance Document entitled "Technical Guidance Manual for Performing Wasteload Allocations, Book VI: Design Conditions[1]," (EPA 7Q10 Guidance). As applied in this case, the result is neither reliable nor accurate. The more appropriate method of calculating flow is that as recommended in the EPA 7Q10 Guidance Document, which recommends using the Log-Pearson Type III methodology for determining hydrologically-based low flows, a method that is widely used and supported by

[1] *See* Technical Guidance Manual for Performing Wasteload Allocations, Book VI: Design Conditions – Chapter 1: Stream Design Flow for Steady-State Modeling EPA440/4/86-014 1986, page 2-2.

USGS[2]. Simply put, the Log-Pearson Type III methodology uses the flow as recorded in nearby stream gages, factors in the watershed flow at the gaging area, and then applies that flow calculation to the ungaged area of the river [in this case, at Outfall 001] and adjusts flow based on the comparative ratio of watershed flow at the Outfall 001 area. EPA (or NHDES) used a hybrid approach that partially relied upon the Log-Pearson Type III methodology where gaged flow data was available, and then unnecessarily and erroneously merged its calculations with the Dingman methodology. *See* **Response to Comments, Response B.1 at Page 4 of 8:**

> "As described in the Fact Sheet, in areas where gaging data *was* available, the 7Q10 flows at the USGS gaging station sites were calculated using Log-Pearson Type III statistics, not the S.L. Dingman Method. In areas where gaging station data *was not* available (and no data exist), the S.L. Dingman Method was used to calculate the 7Q10 in the Merrimack River, as there was no data to which statistics like the Pearson Fit Method could be applied..."

The Dingman equation[3] is used only for ungaged portions of a watershed, and does *not* combine gaged and ungaged flow data, adding and subtracting flows, to calculate low flow in streams. The USGS published a 2003 study[4] on regression equations to estimate low flow frequency statistics in New Hampshire. This study is based in part on the study conducted by Dingman. Both studies caution on using these equations on areas where watershed parameters are outside the ranges of those used to develop the equations and also cautioned that the areas studied were unregulated streams.

Furthermore, the EPA/NHDES combined methodology relied heavily on the stream gage flow value at the Merrimack River gaging station in Lowell, MA, which is the next gaging

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[2] USGS, "Development of Regression Equations to Estimate Flow Durations and Low-Flow-Frequency Statistics in New Hampshire Streams," *Water-Resources Investigations Report* 02-4298, Pembroke, New Hampshire, (2003)
[3] S. Lawrence Dingman and Stephen Lawlor, "Estimating Low-Flow Quantiles from Drainage-Basin Characteristics in New Hampshire and Vermont", *Water Resources Bulletin*, American Water Resources Association, Vol 31, No. 2, April 1995.
[4] USGS, "Development of Regression Equations to Estimate Flow Durations and Low-Flow-Frequency Statistics in New Hampshire Streams," *Water-Resources Investigations Report* , 02-4298, Pembroke, New Hampshire, 2003

station downstream from the NWTF. However, the results of the flow measurements at the Lowell gaging station are considerably affected by the impoundment dam located just upstream of the gaging station at Lowell. Low-flow statistics from a gage that is located within an impounded area of the stream can bias the calculation of upstream flows, since the gage data reflects dam discharge as opposed to the natural flow of the stream.

The EPA/NHDES' unconventional use of the combination of Log-Pearson Type III and S.L. Dingman approaches, together with the heavy reliance on the biased Lowell gaging station flow value, results in an inappropriate and inaccurate calculation of the 7Q10 at Outfall 001.

Nashua does not disagree that the facility design flow should be used in mass balance calculations. However, for the purpose of determining upstream 7Q10, it is more appropriate to use upstream gaging data in the Log Pearson Type III statistical analysis and then use the ratio of the area of the gaged watershed to the area of the watershed at Nashua. Additionally, the flow through the downstream gage is regulated by the Pawtucket Falls Dam. By using the Log Pearson Type III approach, there is no need to adjust the 7Q10 for the WWTF discharge since all of the analysis is based on gaged flow upstream from the WWTF.

The 7Q10 value for Merrimack below Manchester was used to determine the 7Q10 for Merrimack at Nashua using a watershed-specific correction for the drainage area ratio. The estimated drainage area at Nashua is 3999 sq-mi and the estimated drainage area at Manchester is 3092 sq-mi. The 2003 USGS study also states that the use of a drainage area ratio approach is the best approach when the ungaged site is on the same stream as a stream-gaging station. The relationship suggested by the USGS is:

$$Nashua_{7Q10} = Manchester_{7Q10} * (A_{Nashua}/A_{Manchester})^{n} \quad \text{[Equation 1]}$$

Where Ax is the drainage area and n is an exponent particular to the watershed in question, in this case, the Merrimack River. The exponent n was derived using flow records from the two gaged stations on the Merrimack River, Lowell and Manchester[5]. In order to eliminate any concern regarding effect of the WWTF on the downstream gage, only data through 1973 was used in equation 2 to derive the exponent. This is prior to the WWTF treating all of the Nashua flow being brought online in 1974.

$$Lowell_{7Q10} = Manchester_{7Q10} * (A_{Lowell}/A_{Manchester})^{n} \text{ [Equation 2]}$$

This yields a value of n=0.90325 which is used in equation 1 with the 7Q10 below Manchester to determine the 7Q10 at Nashua (as shown in Table 1). The analysis used to derive the 7Q10 is shown in Attachment 7.

Table 1

Location	Calendar Year (cfs)
Merrimack River near Goff's Falls below Manchester 01094000 (1942-2012)	650
Merrimack River upstream of Nashua WWTF	820

Based on the fact that the EPA/NHDES methodology used for calculating the 7Q10 flow resulted in an unreliable and erroneous figure, the more appropriate figure for the upstream critical low flow of **820 cfs** should be used in the dilution factor determination and *all* mass-balanced based effluent limit determinations applicable to the Nashua Permit.

2. **Dilution Factor for Water Quality-Based Effluent Limitations (WQBELs)**
Please refer to Comments B.1 (pages 3-4 of 80), B.4 (pages 6-10 of 80), B.5 (pages 10-15 of 80), B.23 (page 29 of 80), and C.2 (pages 35-39 of 80)

[5] Nashua recognizes that using the gage data at Lowell to derive the watershed exponent introduces some bias. However, mathematically, the effect of the bias is limited.

In the Fact Sheet that accompanied the Draft Permit, EPA uses two different formulas to calculate dilution factors in Attachment B and Attachment I. (*See* Attachment 2). The dilution factor calculation method set forth in Attachment I more clearly follows the NPDES Permit Writers' Manual[6] and should be used for Permit calculations. Accordingly, Nashua used that method for both Attachment B and Attachment I calculations. The resulting calculations using the corrected upstream 7Q10 of 820 CFS, set forth in Attachment 7, are shown below:

Dilution Factor = {((820 cfs x 0.646)+16 mgd) / 16 mgd} x 0.9 = 30.70 [compared with 28.5 as shown in Attachment B to EPA's Fact Sheet]
Dilution Factor = {(820 cfs +141 cfs) / 141 cfs} x 0.9 = 6.13 [compared with 5.747 as shown in Attachment I to EPA's Fact Sheet]

Nashua's revised dilution factor calculations have an impact on a number of limits that were developed during the 2015 NPDES permitting process. Corrections to WQBELs are required in order to appropriately apply the 7Q10/dilution factor throughout the Permit. These will be discussed in detail in the following sections of this Petition that address specific parameters, including: Acute and Chronic TRC Limits at Outfalls 001 and 014, Total Phosphorus, Total Recoverable Copper, and Total Recoverable Lead.

C. **EPA's imposition of a Total Phosphorus (TP) seasonal effluent limit of 0.80 mg/l is clearly erroneous and an abuse of discretion**
Please refer to Comment B.4 (pages 6-10 of 80) and Comments C.1-7 (pages 34 to 43)

The City of Nashua challenges EPA's imposition of a total phosphorus effluent discharge limit of 0.80 mg/l on a seasonal basis from April 1 through October 31, including EPA's calculations of stream flow conditions under which the total phosphorus levels are measured, its calculation of an effluent limitation based on three data points – one of which is almost 8 years

[6] National Pollutant Discharge Elimination System (NPDES) Permit Writers' Manual, pages 6-23 through 6-29, EPA-833-K-10-001, September 2010.

old and no longer reflective of the upstream phosphorus levels in the Merrimack River, and related arguments.

1. The Phosphorus sampling results used by EPA in the calculation to determine the Total Phosphorus (TP) effluent limit were arbitrary and contrary to NHDES and EPA policy

In its Draft Permit, EPA used only two upstream phosphorus samples taken on 10/5/2007 (110 µg/l) and 7/27/2010 (36 µg/l) to calculate the phosphorus levels in the Merrimack River upstream from Outfall 001, and to derive a phosphorus effluent limit of 0.60 mg/l for Nashua. *See* Fact Sheet pp. 22-24, Attachment 2. In its Response to Comments, EPA recalculated its phosphorus effluent limit to 0.80 mg/l by including a third sampling result taken upstream on 9/21/2010 (67 µg/l). *See* Response to Comments pp. 36-39. The addition of one data sampling point to the equation resulted in a significant change in the effluent limitation. If one were to recalculate the same equation used by EPA with only the two most recent 2010 sampling data points of 36 µg/l and 67 µg/l, the phosphorus effluent limit would higher still.

Nashua would argue that if two data points are sufficient for EPA to use in calculating the phosphorus effluent limit, then the 2010 sampling points should be used as being more representative of current conditions, and not the 2007 data point that is 8 years old as of the date of the Permit. The NHDES 2010 CALM uses data within a five-year time period to ensure that impairment listings are based on data reflecting current conditions in the waterbody. Indeed, EPA itself has argued that using the "most currently available data... is logical and rational" in light of the need to assure compliance with water quality standards[7].

[7] *See* Order of Environmental Appeals Board, *In re: Town of Concord (MA) Department of Public Works*, NPDES Appeal No. 13-08 at 14.

There is actually more recent upstream phosphorus sampling results as shown in the table below that should also be considered in any calculation of the phosphorous limit given it is the most recent data available.

Total Phosphorus, ug/l		
Station #	Location	date
		5/17/2012
M070	u/s nashua wwtf	30.00
M170	u/s nashua wwtf	2
M270	u/s nashua wwtf	24
M370	u/s nashua wwtf	2

As set forth in Attachment 8, using the three current sampling data results (two from 2010 and one from 2012), and applying the corrected 7Q10 flow as discussed in Section B, above, **the revised phosphorus limit for Nashua is 2.2 mg/l.**

2. It is Arbitrary and Capricious and a Violation of Equal Protection for the Region to Set a Phosphorus Limit as a Numeric Limit When other Municipalities have received a Load-Based Limit

The phosphorus limits for other municipalities on the Merrimack River were set as load-based limits in recent years:

a. City of Concord, NPDES Permit No. NH0100901, Sept. 2, 2011 = 199 lb/day.

b. Town of Merrimack, NPDES Permit No. NH0100161, Mar. 20, 2014 = 164.8 lb/day.

c. City of Manchester, NPDES Permit No. NH0100447, Feb. 11, 2015 = 236 lb/day.

"As a general matter, an agency cannot treat similarly situated entities differently unless it 'support[s] th[e] disparate treatment with a reasoned explanation and substantial evidence in the record.'" *Lilliputian Sys. v. Pipeline & Hazardous Materials Safety Admin.*, 741 F.3d 1309, 1313 (D.C. Cir. 2014) (quoting *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777, 365 U.S. App. D.C. 287 (D.C. Cir. 2005) (alterations in original)). *See* also *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (equal protection clause requires "all persons similarly

circumstanced shall be treated alike."). EPA has not offered any "reasoned explanation" for why Nashua would be treated differently from the other enumerated communities, and therefore, the Nashua phosphorus permit limit should be set as a lb/day limit, in this case - 277 lb/day, monthly average.

3. Any Phosphorus Limit Set by EPA Should be Subject to a Schedule of Compliance

The Nashua WWTF is not designed for phosphorus removal and has only limited phosphorus data. A significant amount of phosphorus data collected through the critical period is necessary to determine what level of TP reduction is routinely achieved by the WWTF. Following data collection, an assessment of the plant's potential capacity to remove phosphorus must be conducted along with process modeling to determine what operational/capital upgrades are needed to achieve required reduction. Once those upgrades have been identified, the plant improvements must be designed and constructed. The time period necessary for the implementation of any phosphorus removal capability will extend well beyond the effective date of this permit.

4. EPA's failure to account for the existing phosphorus load reductions from upstream communities in determining NWTF's "reasonable potential" to cause or contribute to an instream excursion is Clearly Erroneous and Contrary to Law
Please Refer to Response to Comments C:1-7 (pages 34-43 of 80)

40 CFR 122.44(d)(1)(ii) states:

> When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority *shall* use procedures which account for existing controls on point and nonpoint sources of pollution, ...

As the City of Manchester noted in its comments (Attachment 6, pp 2-4) the communities of Concord, Manchester and Merrimack, New Hampshire have all received permits with

stringent phosphorus limits. Each have, or are in the process of, significantly reducing the phosphorus effluent levels, which has and will continue to have a beneficial impact on the overall phosphorus levels upstream of the NWTF.

In its Response to Comments C.4-7 (pp. 40-43), EPA acknowledged the phosphorus load reductions of Merrimack and Manchester, yet ultimately failed to consider the actual impacts to the Merrimack River from these limitations, contrary to the clear mandate to do so set forth in 40 CFR 122.44(d)(1)(ii). For example, as discussed in Section C. 1, above, EPA is using a 2007 phosphorus sampling data point (110µg/l) as support for concluding that NWTF's effluent discharge has a reasonable potential to cause impairment in the Merrimack River. This 2007 sampling data point does not represent current conditions in the Merrimack and should not be considered in any "reasonable potential" analysis. In addition, EPA also failed to take into consideration the changes in the New Hampshire MS4 permits for these same communities that will result in considerable non-point source loading of phosphorus to the Merrimack River.

At the very least, EPA's failure to consider the improved phosphorus loads upstream in the River and their impact on water quality argues for a compliance schedule that allows Nashua the opportunity to take additional phosphorus samples to determine current conditions.

5. EPA's application of the Gold Book standard as a water quality criteria for phosphorus is Clearly Erroneous and Contrary to Law (Please refer to Fact Sheet (pages 19-26 of 36)

New Hampshire does not have a numeric criteria for phosphorus, and instead uses a narrative criterion requiring that phosphorus contained in an effluent shall not impair a water body's designated uses.[8] In the absence of numeric criteria for phosphorus, EPA applied USEPA's Quality Criteria for Water 1986 (Gold Book). The Gold Book recommends a 0.10

[8] (Env-Wq 1703.14(b) provides that "Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.")

mg/L criterion for phosphorus for any stream not discharging directly into lakes or impoundments.

The Gold Book discusses the need to regulate phosphorus for eutrophication in some situations but specifically states that "a total phosphorus criterion to control nuisance aquatic growths is not presented." Therefore, EPA's position that the Gold Book created nutrient criteria that should be presumed applicable in this instance, in accordance with 40 CFR 122.44(d), is plainly in error. While the Gold Book suggests TP criteria of 0.10 mg/l may be appropriate for some streams, the Gold Book observes also that "there may be waterways wherein higher concentrations or loadings of total phosphorus do not produce eutrophy [...]". Such conditions are influenced by natural confounding factors such as "naturally occurring phenomena [which] may limit the development of plant nuisances", "natural silts or colors which reduce the penetration of sunlight needed for plant photosynthesis", "morphometric features of steep banks, great depth, and substantial flows [which] contribute to a history of no plant problems", and "nutrient[s] other than phosphorus [...] limiting plant growth". The Gold Book specifically indicates the need to consider such site-specific factors, not that such factors or lack of response be ignored in setting nutrient limitations for phosphorus. The phosphorus discussion ends with a reiteration that "no national criterion is presented for phosphate phosphorus for the control of eutrophication."

USEPA did not set specific stream eutrophication TP criteria in the Gold Book. The Gold Book only advises that the rationale contained within the phosphate phosphorus section "should be considered" in setting a TP criterion. Developing a TP criterion would require site-specific studies and data. The Region has undertaken no such site-specific studies in this

instance to demonstrate that NWTF's phosphorus discharges are the cause of cultural eutrification in the Merrimack River[9].

D. The Region's Calculations for Copper and Lead are Clearly Erroneous and Involve an Abuse of Discretion on Important Policy Considerations

Please refer to Comment B.5 (pages 10-15 of 80)

On pages 15 to 18 of the Fact Sheet to Draft Permit (Attachment 2), the EPA calculated the reasonable potential for metals to cause or contribute to an exceedance of water quality standards. Nashua applied the same approach as used by EPA for the "reasonable potential" calculations for copper and lead, with revised input to reflect the 7Q10 of 820 cfs (discussed in Section B, above) and more recent effluent data as shown in Attachment 9. The results (see Table 1, below), demonstrate that there is no reasonable potential for the discharge of lead to violate the instream standard. The monthly average lead limit should be removed from the Permit. In addition, the limit for copper should be revised to a monthly average limit of 2.57 mg/l.

The New Hampshire water quality criteria[10] for copper are expressed as a function of the water effect ratio (WER). Footnote d to Table 1703.1 states that the values displayed in Table 1703.1 correspond to a WER of 1.0 and that the site-specific WER for copper can be determined using the procedures outlined in "Streamlined Water-Effect Ratio procedure for Discharges of Copper" (EPA-822-R-01-005). Nashua is aware that application of a site-specific WER in other cases have demonstrated that the instream copper criteria is often much higher than the criteria given in Table 1703.1. As a result, reasonable potential analyses using the site-specific criteria often demonstrate that a higher limit, or no limit at all, is necessary for copper. Accordingly, Nashua requests a Compliance Schedule to allow time to implement a Water Effect Ratio study

[9] NH regulations also requires a demonstration of the impacts of the phosphorus discharge on the potential use impairment in the River. No such specific analyses was presented in this case.

[10] New Hampshire Code of Administrative Rules, Chapter Env-Wq 1700 Surface Water Quality Regulations

for copper in accordance with the above referenced guidance to determine what the actual instream criteria for copper are and subsequently, if any copper effluent limit is appropriate for the NWTF. Nashua requests that the current copper limit be held in abeyance until such time it takes to conduct the study. At that time, Nashua will conduct a reasonable potential analysis (RPA) and request that the Permit be revised in accordance with the RPA.

[See Table 1 on following page]

Table 1: Mass Balance Equations for Determining Reasonable Potential and Effluent Limitations

Metal	Qd	Cd	Qs	Cs	Qr	Cr	Criteria*0.9		Reasonable Potential	Limit (µg/L)	
	cfs	µg/L	cfs	µg/L	cfs	µg/L	Acute	Chronic	Y/N	Acute	Chronic
Aluminum		52.51		90		N/A	N/A	N/A	N/A	N/A	N/A
Cadmium		0.9		0		0.026	0.851	0.746	No	N/A	N/A
Chromium III		3.156		0		0.092	N/A	N/A	N/A	N/A	N/A
Copper		32.42		2		2.891	3.41	2.57	Yes (chronic)	N/A	21.39
Lead		2.59		0		0.076	12.58	0.49	No	N/A	N/A
Nickel		8.76		0		0.257	N/A	N/A	N/A	N/A	N/A
Zinc	24.75	125.54	820	6.35	844.75	9.842	33.31	33.31	No	N/A	N/A

Metal	Parameter				CF Acute	CF Chronic	Dissolved Criteria		Total Recoverable Criteria	
	m_a	b_a	m_c	b_c			Acute CMC (µg/L)	Chronic CCC (µg/L)	Acute CMC (µg/L)	Chronic CCC (µg/L)
Aluminum	---	---	---	---	---	---	---	---	750	87
Cadmium	1.128	-3.6867	0.7852	-2.715	1.002	0.967	0.95	0.80	0.95	0.83
Chromium III	0.819	3.7256	0.819	0.6848	0.316	0.86	183.07	23.81	579.32	27.69
Copper	0.9422	-1.7	0.8545	-1.702	0.96	0.96	3.64	2.74	3.79	2.85
Lead	1.273	-1.46	1.273	-4.705	0.993	0.993	13.88	0.54	13.98	0.54
Nickel	0.846	2.255	0.846	0.0584	0.998	0.997	144.92	16.10	145.21	16.14
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986	36.20	36.50	37.02	37.02

Merrimack River Hardness (mg/L) 25

E. **The Region's Calculations for Total Residual Chlorine Effluent Limitation is Clearly Erroneous and should be revised**
Please refer to Comment B.23 (page 29 of 80)[11]

On page 15 of the Fact Sheet (Attachment 2), the EPA calculated the Total Residual Chlorine effluent limits based on a dilution factor of 28.5. As discussed in Section B, above, that dilution factor is erroneous and should be revised to reflect the updated 7Q10 and resulting dilution factor as shown by the calculations below:

Total Residual Chlorine Effluent Limitations at Outfall 001

Acute TRC Limit = 19 µg/l x 30.70 = 583 µg/l (0.58 mg/l)
Chronic TRC Limit (Outfall 001) = 11 µg/l x 30.70 = 337 µg/l (0.34 mg/l)

Total Residual Chlorine (Screening and Disinfection Facility -SDF)

Nashua previously requested that the total residual chlorine limits for the SDF be determined using the 30Q10 to better reflect conditions when the facility would actually be discharging. However, as EPA pointed out, New Hampshire's Water Quality Standards require the use of 7Q10 for WQBELs. The TRC limits should be revised to reflect the updated 7Q10 and resulting dilution factor set forth in Section B, above, as shown by the calculations below:

Acute TRC Limit = 19 µg/l x 6.13 = 116 µg/l (0.12 mg/l)
Chronic TRC Limit (Outfall 001) = 11 µg/l x 6.13 = 67 µg/l (0.07 mg/l)

F. **The Requirements for Effluent Limitations Monitoring for BOD, TSS and pH Prior to the Effluent from the NWTF Combining with the Effluent from the WWFTF are Unlawful**
Please refer to Comment B.10, Response to Comments (p. 17 of 80).

In its comments, the City of Nashua requested the Region remove Footnote #3 in Part I.A.1 which sets effluent limitations and monitoring requirements for the treatment facility. See Permit at page 4 of 28. Footnote #3 requires the City to collect samples for BOD_5, TSS, and pH

[11] Nashua raises the Total Residual Chlorine calculation for Outfall 001 because, based on the revised dilution factor as determined in Section B, the EPA calculation in the Fact Sheet is erroneous and must be modified.

at a point within the internal secondary treatment processes. Permit at 4 of 28. There is no outfall at this point; rather, it is prior to blending with other effluent and well before Outfall 001. The Region has specified limits and monitoring frequency for samples collected at this internal location. If samples violate the limitations or if samples are not taken according to Part I.A.1 of the Permit, the Region will seek to enforce against the City of Nashua. It is long-standing that the Region does not have authority to impose such internal limitations and monitoring. See, *Am. Iron & Steel Inst. V. EPA,* 115 F.3d 979, 996 (D.C. Cir. 1997); *Iowa League of Cities v. EPA,* 711 F.3d 844, 877 (8th Cir. 2013).

Similar to the facts of *Iowa League,* the Region is applying effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe. *Id.* at 877. Footnote 3 states the sample "shall be taken at a location prior to the flow combining with the effluent from the [WWFTF]". Permit at 4 of 28. Pursuant to 33 U.S.C. § 1311(b)(1)(B), the Clean Water Act authorizes the EPA to set "effluent limitations based on secondary treatment." *Id.* Effluent limitations are restricted to regulations governing "discharges from point sources into navigable waters." *Id.*; 33 U.S.C. § 1362(11). The object of the limitations is the "discharges of pollutants from a point source." 33 U.S.C. § 112(a). "[D]ischarge of pollutant" means the "addition of any pollutant to navigable waters." 33 U.S.C. § 1362(12). Like *Iowa League of Cities,* the Region is attempting to apply effluent limitations to the discharge of flows from one internal treatment unit (NWTF sedimentation facility or chlorination facility) to another (blending with flow from Nashua's WWFTF). *Iowa* at 877. The Court concluded:

> "[w]e cannot reasonably conclude that [the Region] has the statutory authority to do so. *Iowa,* citing *Am. Iron & Steel Inst. V. EPA,* 115 F.3d 979, 996 (D.C. Cir. 1997) ('The statute is clear: The EPA may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United State through a 'point source'; it is not authorized to regulate the pollutant levels in a facility's internal waste stream.')" *Iowa* at 877-878.

For these reasons, the Board should find that the Region's inclusion of effluent limitations and monitoring requirements on the NWTF's internal treatment processes is based on the Region's clearly erroneous conclusion of law or fact, or both.

G. The Regions' Imposition of Monthly Monitoring and Reporting for BOD_5 and TSS and Associated Footnotes in Internal Treatment Process Flows at the WWFTF and SDF are Clearly Erroneous and Arbitrary and Capricious

Please refer to Comments B.22, B.24, B.25, B.27, and B.28 (pages 27-31 of 80)

This section is a slightly different application of the *Iowa League of Cities* than in Section F. A brief background is important. In Comment B.22, the Region conceded that it erred in the Draft Permit in including a TSS effluent limitation of 30 mg/l. The Region removed the numeric effluent limitations in the Final Permit (presumably in light of *Iowa League*) but argued it had authority to require internal process monitoring, on a monthly basis, and reporting under Section 308 and 402 and denied the City's request to withdraw the monitoring from the Permit. See Response to Comment B.22. As explained below, the Region is mistaken in fact and law. The requirement to report monthly sampling results for BOD_5 and TSS at the WWFTF and SDF are also arbitrary and capricious.

In arguing it has authority to impose monitoring and reporting, the Region is imposing monitoring and reporting requirements as if the WWFTF is a bypass. See Response B.24, page 30 of 80. The Region is including flow monitoring "to better understand whether the WWFTF and bypass are operating" consistent with the LTCP. First, this argument is erroneous as a matter of fact. The LTCP only requires monitoring of E. coli, not BOD_5 or TSS. See LTCP at pages7-1 Water Quality Parameters. Second, the WWFTF is not a bypass and as such, the bypass rule is wholly inappropriate in this case. *Iowa League*, *supra*, at 858, 875-876. The City uses an ACTIFLO system, similar to the facts in *Iowa League*, to treat peak wet weather flows.

The WWFTF was required in the City's 2005 Consent Decree with the Region. Flows from the WWFTF are blended with effluent from the secondary treatment process at the chlorination facility before discharge at Outfall 001. Neither the WWFTF, nor the subsequent blending, is a bypass. Accordingly, the Region's reliance on bypass to support its imposition of monitoring requirements is erroneous as a matter of fact and law.

The Region's reliance on Section 308 is also inapposite. Section 308 is not ambiguous and warranting agency interpretation. Section 308 does not provide authority to identify what to monitor in the effluent. In simple terms, it merely addresses the 'how', 'when', 'where'; not the 'what'. The 'what' is addressed in the other sections that "carry out objective[s] of this chapter." 33 U.S.C. § 1318(a).

The Region's reliance on Section 402 still does not provide it with authority to set effluent limitations and monitoring requirements at points within the internal secondary treatment processes. Footnotes #1, #2, #3, #6, and #7 of Permit Part 1.B.5.a. of the Permit require the City to collect samples at the WWFTF for BOD_5 and TSS at a point within the internal secondary treatment processes (prior to the chlorine contact chamber). See Permit at 13-14 of 28. Footnotes #1, #2, #3, #4, #8, #9, and #10 of Permit Part 1.B.5.b. set effluent limitations and monitoring requirements for the SDF at points within the internal treatment process. See Permit at 15-17 of 28. The Region does not have authority to set these requirements for the WWFTF and SDF and the City objects to the inclusion of BOD, TSS, and associated footnotes in the Permit.

Section 402 authorizes the Region to "issue a permit for the discharge of any pollutant." 33 U.S.C. § 1342(a). "Effluent limitations" are defined as "any restriction established by a State or the [EPA] on quantities, rates, and concentrations of chemical, physical, biological, and other

constituents which are discharged from point sources into navigable waters." 33 U.S.C. § 1362(11) (emphasis added). "[A]ny restriction" encompasses both numerical and non-numerical effluent limitations. *Iowa League*, *supra*, at 866. Thus, effluent limitations contained in an NPDES permit, numeric or otherwise, pertain to discharges from point sources into navigable waters. The Region argues in its Response B.22 that "the [non-numeric] monitoring requirements in Part I.B.5.a. of the Draft Permit, which pertain to the WWFTF, are not effluent limitations." To argue that the effluent limitations are effluent limitations for Section 402 but not for Section 301 is a game of foolery that is, without question, clearly erroneous as a matter of law. Part I.B.5.a. of the City's Permit sets forth "Effluent Characteristic", "Effluent Limitation", and "Monitoring Requirement". BOD_5 and TSS are conventional pollutants traditionally monitored under the NPDES program and the Permit clearly sets forth BOD_5 and TSS under "Effluent Characteristic", "Effluent Limitation", and "Monitoring Requirement" on pages 13-16 of 28 for the WWFTF and SDF. This is not a situation of ambiguity where deference to an agency interpretation of the definition of effluent limitation is warranted. As discussed in Section E above, the Region only has authority to set effluent limitations on effluent discharges, that is, discharges from point sources to navigable waters. *Iowa League, supra,* at 877. Where the flow from the WWFTF and SDF do not discharge to a navigable water and are still part of the internal treatment processes of the NWTF, it is well-established that the Region does not have authority to set effluent limitations. *Am. Iron, supra* at 996; *Iowa League, supra* at 877.

Furthermore, the arbitrary and capricious nature of the Region's BOD_5 and TSS permit requirements is illustrated by the fact that the SDF, as approved by the Region under the 2005 and 2009 Consent Decree, is not designed for BOD_5 or TSS removal. Nor does the design of the WWFT or the SDF incorporate any ability to sample "influent and effluent concentrations" of

BOD_5 and TSS. The receiving waters are not impaired for dissolved oxygen or suspended solids and thus there is no water quality basis for the monitoring requirements.

Assuming arguendo that the Region had authority to impose effluent monitoring of the internal treatment process, the Region failed to provide the City with fair notice of the new compliance obligation in material respects such that it could have timely and cost-effectively factored monitoring into the design of the WWFTF and SDF. *D.C. Water and Sewer Auth.* at *112-114, citing *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 28-29 (EAB, Sept. 27, 2006); *In re Amoco Oil Co.*, 4 E.A.D. 954, 981 (EAB 1993); *In re GSX Servs. of S.C., Inc.*, 4 E.A.D. 451, 467 (EAB 1992).

For the foregoing reasons, the Board should find that the Region's inclusion of effluent limitations and monitoring requirements on internal treatment processes associated with the WWFTF and SDF is based on the Region's clearly erroneous conclusion of law and fact.

H. <u>The Region's Definition of 'Event' for Sampling at the SDF is contrary to *AMm. Iron & Steel Inst.* and *Iowa League of Cities* and should be Modified as Proposed</u>
Please refer to Comments B.22, B.24, and B.25 at 27-31of 80.

The Region's monitoring frequency for the SDF in Part I.B.5.b. is triggered by an 'event', defined by the Region to be "anytime there is flow *into* the SDF". See footnote 3, Permit at 15-17 of 28. In order to be consistent with *Iowa League*, this definition needs to be revised to be "anytime there is flow *out of* the SDF". Otherwise, the Region runs afoul of imposing effluent limitations on internal treatment processes, which as discussed in Sections F and G, is beyond the Region's authority. The SDF is an un-manned, million-gallon storage facility that bleeds flows to the NWTF for full secondary treatment. Flows 'into' the SDF flow back to the NWTF. Thus, it is completely part of an internal treatment processes and beyond the Region's authority to impose effluent limitations. The only time there would be a flow subject to

the Region's authority is in the rare event that the SDF's million-gallon storage capacity is exceeded. Accordingly, it is arbitrary and capricious for the Region to not modify footnote 3 in Part I.B.1.5.b of the Permit and the Board should grant review.

I. <u>The Definition of Dry Weather is contrary to CSO policy and guidance and should be revised</u>
Please refer to Comments B.14 and 16, (pages 19-21 of 80)

In its Response to Comments B. 14 and 16, EPA changed the definition of dry weather:

> Dry weather is defined as any calendar day on which there is less than 0.1 inch of rainfall, no snow melt, **and 24 hours after a storm event** to allow the storm-flow flow to pass through the collection and treatment facilities.

Nashua maintains that this is still insufficient time to allow the flow to pass through the facilities, in the event of certain wet weather storms, particularly in light of the up to 1 million gallons of flow from the SDF to the NWTF after a significant storm event. The Permit condition should be revised to add the following language:

> Distinct rainfall events shall be defined as having at least a 10-hour window with no precipitation > 0.01" and storms exceeding the 2 year, 24-hour event shall be given an *additional* 24 hours to clear the system.

This Section I Discussion refers to the Permit conditions in Part I.A.4 and I.B.2.d

J. <u>Monitoring Requirements for TSS and BOD Should be Reduced</u>
Please refer to Comment B.3 (pages 5-6 of 80)

Consistent with the EPA's response to Comment B.3, the City hereby reserves its right to re-submit its request for a permit modification and request a reduction in the monitoring requirements for BOD_5 and TSS once additional data has been collected.

K. <u>Whole Effluent Toxicity Monitoring</u>
Please refer to Comment B.9 (pages 16-17 of 80)

The City hereby reserves the right to request a permit modification regarding monitoring requirements for ammonia, hardness, aluminum, cadmium, copper, lead, nickel, or zinc as part of EPA-approved WET testing once additional data has been collected.

L. Comment B.18 Part I.B.1.d. Additional Statement Unwarranted

The Long Term Monitoring Plan (LTMP) requirements are intended specifically to protect water quality. If the CSO discharge is in compliance with the LTMP and the Effluent Limitations, then the City is in compliance with water quality standards. The Region's additional statement: "The discharge shall not cause a violation of the water quality standards of the receiving stream" is not warranted and leaves the City and Region vulnerable to third-party lawsuits. The additional statement should be removed.

M. Collection System Operation and Maintenance Plan Deadline Needs Extension

Please refer to Comment B.30 and B.31 (pages 31-32 of 80)

In Part I.E.5, the Region imposed a requirement that the City develop a Collection System Operation and Maintenance Plan (O&M). The City has no such plan. Deadlines are set for 6 months for preliminary information and a final plan is due in 24 months, June 1, 2017. The City requests an extension to the plan completion deadline (24 months) in light of the fact that Nashua is currently soliciting proposals to select a new Enterprise Asset Management/Work Order System. It is upon this new platform that the required O&M Plan will be developed. The City requests an extension from 24 months to 36 months. The City will need the additional time to: 1) select, purchase, and install a new Asset Management System (12 months); 2) to properly migrate the current collection system data (6 to 12 months); 3) to learn how to properly use the new functionality of the software (6 months); 4) to plan, budget and properly staff the proposed program (6 months) in order to develop a reasonable, meaningful and realistic maintenance plan. Extending the deadline from 24 to 36 months will also better align with the requirement of Part I.E.4 (formerly Part I.D.4) that requires the submittal of a map of the sewer system within **30** months of the effective date of

the permit. This map is an integral part of the overall O&M plan and will be updated concurrent with the O&M plan.

N. Nine Minimum Controls Annual Reporting Requirements Need Modification

Please refer to Comment B.21 (page 25 of 80)

Part I.B.3 of the Permit sets forth Nine Minimum Controls annual reporting requirements. The City commented that some actions were unclear and the Region's response focused on whether the requirements were inconsistent with the CSO Control Policy. The City still believes certain of the requirements are unclear as follows. With respect to e(3), (4), (6) & (7) [sic-there is no e(5)]:

- Item e(3) seems to be misplaced in the annual reporting requirements. The analysis it requires seems more appropriate as an implementation measure for NMC #9 (Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls) since the event threshold profile may have changed due to the implementation of LTCP projects.

- Item e(4) seems to presume that Nashua has additional work to be done to implement the LTCP. The City's understanding is that all LTCP projects have been completed although it notes that they were not at the time the draft permit was issued. The City argues the following change should be made to clarify the requirement: replace the phrase, "reducing CSO discharge events" with "implementing the LTCP."

- Items e(6) & (7) also seem more appropriate as implementation measures for NMC #8 (Public Notification to ensure that the public receives adequate notification of CSO occurrences and CSO. With regard to item e(7), is EPA assuming that disinfected CSOs pose a health threat?

V. STAY OF CONTESTED AND NON-SEVERABLE CONDITIONS

In accordance with EPA regulations, the effect of the limits and conditions contested herein must be stayed, along with any uncontested conditions that are not severable from those contested. See, 40 C.F.R. §§124.16(a) and 124.60(b). In light of the fact that the Petitioner is contesting major provisions of the Permit, i.e., Parts I.A., I.B, I.C., I.D., and I.E., and given the encompassing and interdependent relationship of these provisions to all remaining non-contested

provisions, the proper effect is to extend the stay to the Permit in its entirety. In which case, and until such time as the Board reviews and resolves the contested provisions or remands the Permit to the Region for subsequent modification, the Petitioner should be directed to comply with the terms and conditions of the Facility's former NPDES permit, i.e., those terms/conditions issued prior to the March 10, 2015 Permit issuance.

VI. CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, the City of Nashua, New Hampshire respectfully seeks for review by the EAB the appeal terms and provisions of the final NPDES Permit. After such review, the City of Nashua requests:

A. the opportunity to present oral argument in this proceeding and a briefing schedule for this appeal to assist the EAB in resolving the issues in dispute;

B. a remand to EPA Region I with an order to issue an amended NPDES Permit that conforms to the EAB's findings on the terms and provisions appealed by Nashua; and

C. and such other relief that may be appropriate under these circumstances.

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STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I hereby certify that this petition for review, including all relevant portions, contains less than 14,000 words.

Sherilyn Burnett Young

Dated: April13, 2015.

LIST OF ATTACHMENTS

Attachment 1	Draft NPDES Permit No. NH0100170 Dated: July 11, 2013
Attachment 2	Fact Sheet to NPDES Permit - Dated: July 11, 2013
Attachment 3	Final NPDES Permit No. NH0100170 Dated: March 6, 2015
Attachment 4	EPA Response to Comments Dated: March 6, 2015
Attachment 5	City of Nashua Comments to Draft NPDES Permit Dated: November 18, 2013
Attachment 6	City of Manchester Comments to Draft NPDES Permit Dated: November 14, 2013
Attachment 7	7Q10 Low Flow and Dilution Calculation
Attachment 8	Total Phosphorus Effluent
Attachment 9	Copper and Lead Effluent Limitations Calculation

CERTIFICATE OF SERVICE

I, Sherilyn Burnett Young, hereby certify that on this 13th day of April 2015, I served a copy of the foregoing Petition for Review, Statement of Compliance with Word Limitations on the parties identified below by U.S. first-class mail, postage pre-aid:

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Dated on the 13th day of April, 2015.

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