



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dated by electronic signature

VIA ELECTRONIC FILING

Emilio Cortes
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3332
Washington, DC 20004

Luciana Burdi
Director of Capital Programs and Environmental Affairs
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

**RE: Massachusetts Port Authority
NPDES Permit No. MA 0000787; NPDES Appeal No. 23-03**

Dear Mr. Cortes and Ms. Burdi:

In accordance with 40 C.F.R. §§ 124.16 and 124.60, the U.S. Environmental Protection Agency (“EPA”) Region 1 (“the Region”) is providing notice of uncontested and severable permit conditions in connection with National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA 0000787, issued by the Region to the Massachusetts Port Authority (“Massport”) on August 24, 2023 (“2023 Permit”). When effective, the 2023 Permit will supersede Massport’s previous permit, which has been administratively-continued since its expiration in July 2012 (“2007 Permit”).

On September 25, 2023, Massport timely filed a Petition for Review of the 2023 Permit. Massport stated that it was contesting “Part I.A.1 and Part I.A.2, only with respect to the numeric limits on fecal coliform and *Enterococcus*.” See Petition at 11. Specifically, the contested Permit provisions are:

1. The fecal coliform numeric limit from Outfall 01A (Permit Part I.A.1, pg. 4); and
2. The *Enterococcus* numeric limits from Outfalls 01A, 02A, 03A, and 04A (Permit Parts I.A.1 and I.A.2, pgs. 4, 11).

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 an appeal is pending, contested permit conditions are stayed. *Id.* at § 124.16(a)(1). Uncontested permit conditions that are “inseverable” from contested conditions are also considered to be contested and are stayed. *Id.* at §§ 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. *Id.* at §§ 124.16(a)(2)(i) and (ii).

The Region is notifying you that the Contested Conditions are stayed pending final agency action. The stay operates in accordance with EPA regulations. As the holder of an existing, administratively-continued permit, Massport must continue to comply with conditions of that permit that correspond to the stayed conditions. *Id.* at § 124.16(c)(2). As such:

1. The fecal coliform numeric limit for Outfall 01A in the 2023 Permit is stayed. There is no corresponding numeric limitation in the 2007 Permit, but the permittee must comply with the 2007 Permit’s monthly grab sample and reporting requirements.
2. The *Enterococcus* numeric limits for Outfalls 01A, 02A, 03A, and 04A in the 2023 Permit are stayed. There are no corresponding numeric limitations in the 2007 Permit, but the permittee must comply with the 2007 Permit’s monthly grab sample and reporting requirements.

EPA has determined that all other conditions of the 2023 Permit are uncontested and severable, and accordingly will become fully effective and enforceable on November 1, 2023.

If you have any questions regarding this notice, please contact Erin Flannery-Keith (617) 918-1096 of the Office of Regional Counsel.

Sincerely,

David Cash
Regional Administrator
US EPA-Region 1

cc:

Colin G. Van Dyke, Esq., Attorney for Massachusetts Port Authority
Carlos Rosende, Esq., Attorney for Massachusetts Port Authority
Beth Kudrauskas, EPA Region 1
Todd Borci, EPA Region 1
Lealdon Langley, Massachusetts Department of Environmental Protection