

**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

**NOTICE TO INTENT TO WITHDRAW AND/OR MODIFY
PORTIONS OF THE PERMIT**

On April 13, 2015, the City of Nashua, New Hampshire petitioned the Environmental Appeals Board for review a final National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA Region 1 authorizing discharges of wastewater effluent from the City’s Wastewater Treatment Facility (“WWTF”) to the Merrimack River, as well as from nine Combined Sewer Overflows (“CSOs”) to the Merrimack and Nashua Rivers.

Under the regulations governing the EAB appeals process, the Regional Administrator may, at any time prior to 30 days after filing the response to the petition, withdraw portions of the permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. 40 C.F.R. § 124.19(j). The Region has determined to exercise that right and intends to issue within the prescribed period for withdrawal as of right a “Notice of Partial Withdrawal and/or Intent to Modify City of Nashua Wastewater Treatment Facility NPDES Permit No. NH0100196” (“Notice”), and will subsequently commence draft permit modification proceedings.

Pursuant to that Notice, the Region will withdraw and modify its final compliance schedule for the Collection System and Operation and Maintenance Plan, as set forth in Part I.E.5 of the Final Permit, which established a 24-month schedule to complete the Plan. In its Response to Comments, the Region rejected the City's proposed 30-month compliance schedule, but indicated that it would entertain an extension of that period were the City to provide adequate justification in the form of a permit modification request. Ex. 4 (RTC) at 32. In its Petition, the City proposed a 36 month schedule to, *inter alia*, accommodate a new Enterprise Asset Management/Work Order System that is being adopted by the City and that will be the platform upon which the Plan will be developed. Pet. at 26. The Region has concluded that the basis for this proposed extension is reasonable and will propose a modification consistent with the City's request.

The Region also intends to propose a modification to establish a compliance schedule for the Permit's water quality-based effluent limitation for phosphorus, as the City has requested. Pet. at 13. The Region's authority to delay compliance with state water quality standards through a compliance schedule made part of an EPA-issued NPDES permit is limited to those circumstances in which the applicable state's water quality standards or its implementing regulations "can be fairly construed as authorizing a schedule of compliance." *In re Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 175 (Adm'r 1990), modification denied, 4 E.A.D. 33, 34 (EAB 1992). Absent authority for delay granted by the applicable state water quality standard, the NPDES permit must require compliance with state water quality standards immediately upon issuance. *In re J & L Specialty Prods. Corp.*, 5 E.A.D. 333, 344 (EAB 1994). After the public comment period, but shortly before final permit issuance, the Region approved amendments to New Hampshire's WQS, which authorizes the use of compliance schedules in NPDES permits

under specified circumstances, including those that are applicable to these proceedings. Env-Wq 1701.03. Under the circumstances, the Region believes it would be appropriate as well as equitable to establish a compliance schedule for the City's phosphorus WQBEL.

Upon issuing its Notice, the Region will also move to dismiss any issues raised in the Petition that are mooted by the Withdrawal Notice.

Dated: May 13, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Intent to Withdraw and/or Modify Portions of the Permit, 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 and Overnight Mail:

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 Overnight Mail:

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

Dated: May 13, 2015

Samir Bukhari