UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

VIA CERTIFIED MAIL

October 25, 2005
U.S. Environmental Protection Agency
Environmental Appeals Board
Eurika Durr, Clerk of the Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-001

Donald Anglehart, Esq.
Gadsby Hannah LLP
225 Franklin Street
Boston, Massachusetts 02110

Doran Crouse, Assistant Commissioner
City of Marlborough
Public Works Department
135 Neil Street
Marlborough, Massachusetts 01752

Re: Notice of Uncontested and Severable Conditions of NPDES Permit MA0100480
NPDES Appeal Nos. 05-05 and 05-09

Dear Ms. Durr, Mr. Anglehart and Mr. Crouse:

On July 1, 2005, the City of Marlborough ("Permittee") filed a Petition for Review of NPDES permit MA0100480 ("Permit") with the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.19(a). On June 30, 2005, the Organization for the Assabet River ("OAR") also filed a Petition for Review of the Permit with the Board. The Permit had been reissued to the Permittee on May 26, 2005 by the New England Regional Office of the U.S. Environmental Protection Agency ("Region"). The Permit superseded the permit issued by the Region on December 14, 2000 ("Prior Permit").

Uncontested and Severable Conditions

In its Petition, the Permittee contests the following limits and conditions of the Permit: (i) the BOD_5 limit, (ii) the pH limit and the 3/day pH monitoring requirement, (iii) the 2/day total residual chlorine monitoring requirement, (iv) the November-May ammonia-nitrogen limit, (v)

the November-March, April and May-October phosphorus limits, (vi) the total aluminum limit, (vii) the total copper limit, (viii) the flow limit and (ix) the requirement that the Permittee report to the Region deviations in the Permit's sampling or testing programs.

OAR in its Petition contests the November-March, April and May-October phosphorus limits.[1] OAR also contests the compliance schedule of the latter limit.

The limits and conditions contested by the Permittee and OAR are collectively referred to herein as the "Contested Conditions." Pursuant to 40 C.F.R.§§ 124.16(a)(2)(ii) and 124.60(b), this letter notifies you of my determination that the Contested Limits are stayed until final agency action under 40 C.F.R.§ 124.19(f). All other conditions of the Permit are uncontested and severable from the Contested Conditions. Thus, all of the other conditions are not stayed and will become fully effective enforceable obligations of the Permit thirty days from the date of this notice, as provided by 40 C.F.R. §124.16(a)(2)(i). With respect to each of the Contested Condition, the corresponding term, if any, in the Prior Permit shall remain in effect.

If you have any questions regarding this correspondence, please feel free to contact Samir Bukhari, the Region's legal counsel in this matter, at 617-918-1095, or David Pincumbe, in our Office of Ecosystem Protection, at 617-918-1695.

Sincerely,

Robert W. Varney
Regional Administrator

1/ By letter dated September 30, 2005, OAR notified the Board of its voluntarily dismissal of its Petition as it relates to metals limits in the Permit.

cc:

Glenn Haas, MA DEP
Paul Hogan, MA DEP
Linda Murphy, EPA
Roger Janson, EPA
Brian Pitt, EPA
David Pincumbe, EPA
Jim Curtin, EPA
Carl Dierker, EPA
Ann Williams, EPA