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Phosphorus/Clean Water Act: Massachusetts Sanitary District U.S. EPA Environmental Appeals Board Challenge to NPDES Permit Conditions

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The Greater Lawrence Sanitary District ("District") filed before the United States Environmental Protection Agency ("EPA") Environmental Appeals Board an October 25th document titled:

Petition for Review of Greater Lawrence Sanitary District's NPDES Permit Issued by Region 1

The Petition challenges certain conditions in a Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit issued by Region 1 of EPA to the District.

The District operates a wastewater treatment facility ("Facility") and interceptor system (including five combined sewer outfalls) that discharges into the Merrimack River. The Massachusetts Department of Environmental Protection ("DEP") designates the river as a Class B waterbody whose designated uses include aquatic life, fish consumption, primary contact (swimming), secondary contact (boating), and aesthetics.

Region 1 of EPA and DEP issued a final NPDES permit to the District on September 25th.

The Petition challenges certain conditions in the NPDES permit, citing four alleged errors:

- EPA did not show that the phosphorus limit was necessary because this segment of the river or downstream is not impaired for eutrophication or that phosphorus causes or contributes to it (i.e., it is alleged there is no violation of the applicable state water quality standard and therefore no basis to limit phosphorus in the NPDES permit)
- Even if there was evidence of eutrophication, EPA erred in setting the instream numeric target for the state nutrient water quality criteria at 0.1 mg/L based on EPA's 1986 "Quality Criteria for Water" (i.e., Gold Book) rather than relying on site specific data showing a healthy river at phosphorus levels above this threshold
- EPA relied on incorrect and unreliable data and made errors in calculating the river's low flow conditions and dilution factor underlying the determination of whether the District's discharge had the "reasonable potential" to exceed the instream water quality target and in setting the applicable NPDES discharge limit
- If the limit were to remain, the Region erred in removing the compliance schedule included in the prior Draft Permit

A copy of the Petition can be downloaded [here](#).

