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# Phosphorus/Clean Water Act: U.S. EPA Environmental Appeals Board Addresses POTW Challenge to NPDES Permit

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") addressed a June 29th Petition for Review ("Petition") filed by the City of Lowell, Massachusetts, ("Lowell"). See NPDES Appeal No. 19-03.

Lowell challenged the Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit EPA issued to its regional wastewater treatment facility ("Facility").

Lowell's Petition addressed NPDES permit provisions including:

- Phosphorus
- Wastewater flow
- E. Coli effluent limitations
- Monitoring and reporting requirements for whole effluent toxicity and metals
- Prohibition on the bypass of wastewater treatment
- Failure to include a schedule for submission/implementation of a long-term control plan for combined sewer overflows (CSOs)

The Lowell Facility holds an NPDES permit that authorizes the discharge of wastewater effluent into the Merrimack River and two tributaries. The challenged NPDES permit is a renewal of the permit issued in 2005. The NPDES permit renewal was issued by EPA Region 1.

The Lowell Facility is described as receiving wastewater from the City of Lowell. In addition, its wastewater influent includes wastewater from the towns of Tewksbury, Dracut, Tyngsboro, and Chelmsford. The wastewater influent includes domestic, industrial, septage, and stormwater.

By way of summary, EAB addressed each of the issues raised in the Petition as follows:

1. Phosphorus Effluent Limit
  1. Did not demonstrate that EPA treated a federal water quality recommendation for phosphorus as a binding rule in establishing the limit for phosphorus
  2. Failed to demonstrate that EPA erred by using a steady-state model for projecting phosphorus concentrations in the Merrimack River instead of waiting for Lowell to complete a different type of model (relying on data on the low flow levels in the river in projecting phosphorus concentrations)

2. Wastewater Flow Effluent Limit
  1. EPA responded to Lowell's comment that it is authorized to limit flow under its statutory and regulatory authority prescribed permit conditions that assure compliance with the technology- and water quality-based effluent limitations in the permit
  2. Failed to demonstrate that the flow limit was unnecessary to protect public health or the environment or inconsistent with EPA policy on management of CSOs
3. E. Coli Daily Effluent Limit
  1. Failed to address EPA's response to comments rejecting its challenges related to this issue
  2. Failed to raise the specific issue related to the E. coli effluent limit in its public comments
4. Long-term Control Plan
  1. Issue is now moot because Lowell has developed and submitted a plan
5. Prohibition on Bypass of Treatment
  1. Failed to demonstrate a basis for a bypass allowance
  2. Failed to demonstrate that its arguments based on other permits for other wastewater treatment facilities are relevant to the terms of its NPDES permit
6. Prohibition Against Violating Water Quality Standards
  1. Argument that EPA lacked authority to impose this requirement is rejected because the section 301 Clean Water Act issues raised are vague and unsubstantiated
  2. Incorrectly asserts that the protection against violating such standards is unnecessary
  3. Fails to substantiate its claim that such prohibition deprives Lowell of the Clean Water Act permit shield, fair notice, or due process
  4. Argument that EPA did not follow its own policy on CSOs is rejected because of Lowell's failure to explain how the federal agency erred in responding to its comment on the issue

EAB, therefore, denied Lowell's Petition for Review in all respects.

A copy of the June 29th EAB Order Denying Review can be found [here](#).