



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Dr. Hamid Karimi, Deputy Director
District Department of the Environment
1220 First Street N.E.
Washington, D.C. 20002

DEC 20 2011

Re: Notification of Stayed Permit Conditions, District of Columbia
Municipal Separate Storm Sewer System Permit
NPDES Permit No. DC0000221
EAB Appeal Nos. NPDES 11-05, NPDES 11-06

Dear Dr.  Karimi:

As you likely are aware, EPA reissued the National Pollutant Discharge Elimination System (NPDES) permit DC0000221 (the Permit) to the Government of the District of Columbia on September 30, 2011, with an effective date of October 7, 2011. On November 4, 2011, Friends of the Earth, Anacostia Riverkeeper, Potomac Riverkeeper and Natural Resources Defense Council filed a petition for review of the Permit with the Environmental Appeals Board (EAB). On the same date, the District of Columbia Water and Sewer Authority and the Wet Weather Partnership filed a separate petition for review.

This letter serves as notification pursuant to 40 C.F.R. § 124.16(a)(2) and 124.60(b) of those permit conditions that are stayed as a result of those Petitions for Review until final agency action under 40 C.F.R. § 124.19(f). Unless otherwise indicated, each of the below sections or subsections is stayed in its entirety, but the stay extends only to the section or subsection indicated (e.g., the stay of subsection 4.10.3 does not extend to other subsections such as 4.10.1, etc.):

Section 1.4 (Discharge Limitations) is stayed in part – specifically:

- Subsection 1.4.1 is stayed;
- Subsection 1.4.2 is stayed; and
- The last sentence of Section 1.4 (“Compliance with the performance standards and provisions contained in Parts 2 through 8 of this permit shall constitute adequate progress toward compliance with DCWQS and WLAs for this permit term.”) is stayed.

The remainder of Section 1.4 is not stayed.

Subsection 2.3.1 (Stormwater Management Program Administration/Permittee Responsibilities) is stayed only to the extent that it refers to the “DC Water and Sewer Authority (DC Water)”.

Subsection 4.3.1.3 (SSO reporting) is stayed only to the extent that it requires the Permittee to notify the public within 24 hours when the sanitary sewer overflows to the MS4.

Subsection 4.10.3 (Consolidated TMDL Implementation Plan) is stayed.

Section 4.11 (Additional Pollutant Sources) is stayed.

Subsection 5.1.1 (Design of the Revised Monitoring Program) One sentence of this provision is stayed, which sentence is indicated in strikethrough font as follows:
“3. Include any additional necessary monitoring for purposes of source identification and wasteload allocation tracking. ~~This strategy must align with the Consolidated TMDL Implementation Plan required in Part 4.10.3~~ For all pollutants in Table 4 monitoring must be adequate to determine if relevant WLAs are being attained within specified timeframes in order to make modifications to relevant management programs, as necessary.”

The remainder of the Permit conditions are uncontested and severable from the contested conditions and, in accordance with 40 C.F.R. Sections 124.16(a)(2), 124.20(d), and 124.60(b)(5), will become fully effective and enforceable 33 days after this notice is mailed.

By way of its Order dated November 29, 2011, the EAB requested additional briefing on various questions related to who is representing the Government of the District of Columbia in this matter, DC Water’s legal authority to file a petition challenging the Permit, and other related issues. Should EPA determine, as a result of that additional briefing, that Permit conditions other than those identified in this letter are contested and/or unseverable from contested Permit conditions, EPA will notify the EAB, the applicant, and all other interested parties of its determination as soon as possible.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

cc: Environmental Appeals Board
Alan Barak, Esq.
Paul Calamita, Esq.
Jennifer Chavez, Esq.
Rebecca Hammer, Esq.
Amy E. McDonnell, Esq.