



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# NPDES Permit/Clean Water Act: U.S. EPA Environmental Appeals Board Petition Filed Challenging Massachusetts City's Phosphorus Provision

12/02/2021

OARS, Inc. ("OARS") filed a Petition for Review ("Petition") before the United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") challenging a provision addressing phosphorus in a Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit issued to the City of Marlborough, Massachusetts ("Marlborough").

The NPDES permit was issued for a discharge by Marlborough's Publicly Owned Treatment Works ("POTW").

OARS describes itself as a 501(c)(3) private non-profit watershed organization established in 1986 to protect, preserve, and enhance the natural and recreational features of the Assabet River and its tributaries and watershed.

The Marlborough POTW is stated to discharge into the Assabet River. The river is stated in the Petition to have been listed as impaired and subject to a 2004 Total Maximum Daily Load for Total Phosphorus. Further, the Petition states that the river fails to meet the applicable water quality standards.

EPA Region 1 issued an NPDES permit to the Marlborough POTW on October 25th.

OARS states that its "primary objection" to the NPDES permit is:

. . . that it contains very substantial changes from the Draft Permit in the effluent discharge limits for phosphorus, the key nutrient driver of significant eutrophication in the Assabet River and the focus of the 2004 TMDL.

The organization describes these changes as rendering the phosphorus effluent limits in the NPDES permit as "much less stringent than those in the prior permit, which has been in effect since 2005."

OARS argues that no notice was provided to the organization regarding what it describes as material changes to the draft permit that were being contemplated. As a result, it claims that no opportunity was provided to comment on such changes.

OARS further states that the changes will allow:

. . . significantly greater loading of phosphorus into the river than has been occurring over the past decade, thereby threatening to reverse the improvements in the river's eutrophic condition over that same period.

Such permit changes are argued to violate the explicit findings and mandates of the previously referenced TMDL and to have not been factored into the 401 Water Quality Certification Massachusetts issued based on the different effluent limits in the draft permit. This is argued to have violated Massachusetts' anti-degradation regulation.

OARS requests a remand of the NPDES permit to the Region with a directive to:

1. open a public comment period for the purpose of receiving comments from OARS and other interested parties on these proposed changes to the POTW's phosphorus effluent limits and
2. seek a proper state 401 certification based on these new and substantially less stringent limits

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