

pH/Aluminum/Copper: U.S. EPA Environmental Appeals Board Addresses Challenge to New Hampshire POTW NPDES Permit Conditions



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The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) issued a June 17th decision challenging certain conditions in a Keene, New Hampshire, (“City”) Public Owned Treatment Works (“POTW”) Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit. See NPDES Appeal No. 21-03.

The challenged NPDES permit conditions included:

- pH effluent limit
- Aluminum effluent limit
- Special condition related to copper

The City owns and operates a POTW located in Swanzey, New Hampshire. The POTW is stated to collect and treat sanitary industrial wastewater from the City of Keene and the towns of Marlborough and Swanzey. It is designed to treat up to six million gallons per day of wastewater. It discharges into the Ashuelot River.

The City applied for the reissuance of an NPDES permit that had been issued in 2007 and 2012. EPA Region 1 subsequently issued a draft permit renewal in 2020. Region 1 issued a final permit on September 13, 2021.

The City petitioned EAB to review the NPDES permit addressing the previously referenced issues.

In addressing the three challenged NPDES permit conditions, EAB held:

- Effluent limit for pH (the City failed to demonstrate that Region 1 clearly erred or abused its discretion in setting the pH limit without applying the natural causes exception in the state water quality standards for pH/argument that discharge will harm existing water quality standards resulting in harm to aquatic life deemed beyond the scope of a permit appeal to EAB)
- Effluent limit and request a special condition for aluminum (Region 1 appropriately established an effluent limit for aluminum based on the aluminum criteria contained in New Hampshire’s existing water quality standards/rejects the City’s contention that Region 1 should have instead calculated

aluminum limit based on recommended criteria in EPA's non-binding guidance which New Hampshire may or may not choose to adopt is contrary to the Clean Water Act)

- Request of special condition for copper (Region 1 gave due consideration to the City's request for a special condition providing pre-authorization of a site-specific approach/acceptance of the results in order to revise the permit limit based on the results/Region 1 adequately explained it will not commit to a future permitting outcome which is consistent with the Clean Water Act)

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