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Bacteria Effluent Limits/Logan International Airport: Massachusetts Port Authority Petitions U.S. EPA Environmental Appeals Board to Challenge NPDES Permit

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The Massachusetts Port Authority (“Authority”) filed a September 20th document before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) styled:

Petition for Review of Massachusetts Port Authority NPDES Permit Issued by Region 1 (“Petition”)

The *Petition* challenges the bacterial effluent limits in a Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit issued to the Authority by EPA Region 1 applicable to Logan International Airport (“Logan”).

The Authority describes the Logan NPDES permit as addressing stormwater associated with industrial activity. This includes discharges from vehicle maintenance areas, equipment cleaning areas, and deicing and anti-icing activities. These discharges are stated to flow through a number of outfalls to the Boston Harbor, Boston Inner Harbor, and Winthrop Bay.

The NPDES permit that is the subject of the *Petition* was issued in 2023. It is stated to revise and update a previous 2007 NPDES permit.

Pursuant to the 2007 permit, the Authority states that it monitored and observed bacteria levels in its industrial stormwater discharges. It further states that in consultation with EPA and the Massachusetts Department of Environmental Protection that extensive efforts have been undertaken to:

. . . investigate the sources of bacteria, including animal waste and illicit sewer connections.

Nevertheless, the Authority states that the sources of bacteria in these discharges remains unknown. EPA is argued to have conceded that the sources of the bacteria “remain unclear” and are “inconclusive.”

The *Petition* also outlines best management practices and other activities undertaken to address bacteria. It states that to the Authority’s knowledge none of the available technologies have been proven for treatment of stormwater in the volumes discharged at Logan. Further, the Authority states that:

. . . extensive studies will be required prior to design and construction of a suitable stormwater treatment system at Logan, if required.

The Authority argues that the 2023 Logan permit:

. . . includes an array of new requirements, including bacteria limitations, installation of blend-to-temperature technology for deicer usage reduction, whole effluent toxicity (“WET”) testing, per- and polyfluoralkyl substances (“PFAS”) sampling, best management practices for illicit discharge detection, and pH study.

Nevertheless, the *Petition* focuses on required numerical bacteria limits. Such new limits are argued to be an “abrupt change” in requirements related to fecal coliform and Enterococcus.

The *Petition* argues that EPA:

- Deprives the Authority of a reasonable opportunity to remain in compliance.
- Provided no timeline during which the Authority can prepare to meet the new bacteria effluent limits.
- No time is provided to evaluate options for addressing bacteria in the discharge.

The bacteria effluent limits are stated to be scheduled to take place on November 1, 2023.

Finally, the *Petition* argues that the bacteria effluent limits are:

- Overly burdensome.
- Not required by law.
- Based on clearly erroneous findings of fact or conclusions of law.

A remand of the NPDES permit to EPA Region 1 with an order to issue an amended NPDES permit conforming to the EAB’s findings on the terms and provisions appealed by the Authority is requested.

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