

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Department-Initiated Modification of
State Pollutant Discharge Elimination System
(SPDES) Permits Issued Pursuant to
Environmental Conservation Law Article 17 and
6 NYCRR Parts 621, 624 and 750 for Fourteen
Publicly Owned Sewage Treatment Plants
Operated

- by the -

DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE CITY OF NEW YORK,

Permittee.

DEC Permit ID Nos. 2-6007-00025, et al.

SPDES Permit Nos. NY0026191, et al.

INTERIM DECISION OF THE DEPUTY COMMISSIONER

June 26, 2006

INTERIM DECISION OF THE DEPUTY COMMISSIONER¹

Staff of the New York State Department of Environmental Conservation ("Department") initiated proceedings to modify SPDES permits for fourteen water pollution control plants ("WPCPs") owned by the City of New York and operated by the New York City Department of Environmental Protection ("DEP"). Presently pending before the Deputy Commissioner in this permit hearing proceeding conducted pursuant to part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") ("Part 624") are (1) an appeal by Department staff from an April 2004 issues ruling on nitrogen issues by Administrative Law Judge ("ALJ") Kevin J. Casutto, and (2) an adjourned schedule for filing appeals from a November 2005 issues ruling on combined sewer overflow ("CSO") issues by ALJ Casutto. The issues rulings concerned the terms of draft modified SPDES permits revised in February 2004.

In January 2006, a consent judgment was entered in Matter of New York City Dept. of Env'tl. Protection v State of New York (Sup Ct, New York County, Jan. 10, 2006, Feinman, J., Index No. 04-402174). The consent judgment provided that new draft SPDES permit would be issued by the Department addressing both

¹ By memorandum dated August 11, 2004, then Commissioner Erin M. Crotty delegated decision making authority in this matter to Deputy Commissioner Carl Johnson. The parties were so informed by letter dated August 12, 2004.

nitrogen and CSO issues, among other things.

In March 2006, ALJ Casutto and Chief ALJ James T. McClymonds conducted a conference call with Department staff, DEP, and the proposed intervenor parties. During that conference call, staff confirmed that new draft modified SPDES permits would be issued shortly. Chief ALJ McClymonds and ALJ Casutto also confirmed that the parties to this Part 624 proceeding would be provided with the opportunity to review the anticipated new draft SPDES permits, and that the issues conference would be reconvened if necessary. The conference call participants also debated whether staff's appeal from ALJ Casutto's April 2004 nitrogen issues ruling had been rendered academic by subsequent events.

Department staff issued new draft SPDES permits dated April 3, 2006, and transmitted them to the participants to this proceeding on April 4, 2006. Further typographical revisions were issued and transmitted to the participants on April 19, 2006. According to Department staff's transmittals, the new draft SPDES permits reflect changes intended to be consistent with the January 2006 consent judgment, including revisions addressing nitrogen and CSO issues. Staff has also indicated that the new April 2006 draft SPDES permits supersede the February 2004 draft permits.

Discussion and Ruling

I conclude that Department staff's appeal from the April 2004 nitrogen issues ruling has been rendered academic. Staff's appeal concerned the differences between the February 2004 draft SPDES permits and a prior April 2002 nitrogen consent order executed by Department staff and DEP, and the Department's authority to impose stricter nitrogen discharge limits in the February 2004 draft permits than those provided for in the April 2002 consent order. With the execution of the January 2006 consent judgment and the issuance of the new revised draft SPDES permits, the factual basis for the prior appeal has been rendered moot. Accordingly, staff's appeal is dismissed as academic, and the matter remanded to the ALJ for further proceedings. Any remaining issues concerning the scope of Department staff's authority should be addressed in the context of a proceeding on the current draft permits.

With respect to the adjourned schedule for filing appeals from the November 2005 CSO issues ruling, I conclude that the appeals schedule should continue to be adjourned without date, and the matter remanded to the ALJ to consider the impact the new draft SPDES permits have, if any, upon the November 2005 ruling. Following further proceedings before ALJ Casutto, the ALJ will afford the parties and potential parties the opportunity to file those administrative appeals that are appropriate on any

issues raised by the new draft permits and any subsequent ALJ rulings.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Carl Johnson
Deputy Commissioner

Dated: June 26, 2006
Albany, New York