

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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In the Matter of  
Invensys Systems, Inc.

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September 26, 2017  
OADR Docket No. 2015-019  
NPDES Permit No. MA0004120  
Foxborough, MA

**FINAL DECISION**

Invensys Systems, Inc. (“Invensys” or “the Petitioner”) filed this appeal with MassDEP’s Office of Appeals and Dispute Resolution (“OADR”) in August 2015 challenging a National Pollutant Discharge Elimination System Permit (“NPDES Permit”) that MassDEP and Region 1 of the United States Environmental Protection Agency (“USEPA”) issued to Invensys in July 2015. The NPDES Permit was issued in connection with the Invensys’ discharges of a combination of industrial stormwater and groundwater through two outfalls at its facility at 38 Neponset Avenue in Foxborough, Massachusetts (“the Property”). In November 2015, OADR’s Chief Presiding Officer issued an Order (“the November 2015 Stay Order”) staying the proceedings in the OADR appeal pursuant to 310 CMR 1.01(6)(h) as a result of Invensys having



also appealed the NPDES Permit to the USEPA's Environmental Appeals Board ("EAB").<sup>1</sup> 310

CMR 1.01(6)(h) provides that:

. . . Upon notice or motion by any party, [MassDEP] or the Presiding Officer shall stay administratively any appeal of a Surface Water Discharge Permit when the NPDES permit issued by [USEPA] for the same discharge has been appealed under the federal Clean Water Act [to the USEPA's EAB]. . . . Upon a motion to proceed, [MassDEP] will proceed with the adjudicatory hearing upon proof of the approval under the relevant local, state or federal law or other ruling providing a basis for lifting the stay, or a certification by [MassDEP] or another public agency that immediate resolution of the appeal may be necessary to protect public health and safety.

In April 2016, Invensys and the USEPA executed an Administrative Consent Order ("the USEPA AOC") resolving Invensys' appeal of the NPDES Permit before the USEPA's EAB.

Recently, in August 2017, Invensys and MassDEP executed a Settlement Agreement to resolve Invensys' OADR appeal of the NPDES Permit. The Settlement Agreement is in the form of an

Administrative Consent Order ("the MassDEP Consent Order") that has been executed

by: (1) Peter Wexler, Invensys' Senior Vice-President and General Counsel; and (2) Lealdon

Langley, the Director MassDEP's Wetlands and Wastewater Management Program. The

MassDEP Consent Order is subject to my review and approval pursuant to 310 CMR 1.01(8)(c).

After reviewing the MassDEP Consent Order, I find that it is reasonable and furthers the statutory and regulatory interests of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53, and MassDEP's Surface Water Discharge Permit Regulations at 314 CMR 3.00. Accordingly, the November 2015 Stay Order issued by OADR's Chief Presiding Officer is vacated, and I issue

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<sup>1</sup> The USEPA's EAB "is the final EPA decision maker on administrative appeals under all major environmental statutes that EPA administers," including the federal Clean Water Act.  
[http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf)

this Final Decision approving and incorporating the MassDEP Consent Order. Pursuant to the MassDEP Consent Order, I issue the following Orders:

(1) In accordance with ¶ 45 of the MassDEP Consent Order, the effective date of the MassDEP Consent Order is the date of this Final Decision.

(2) In accordance with ¶¶ 23A-23J of the MassDEP Consent Order, Invensys shall perform the following actions:

- (a) Invensys shall continue to implement the measures set forth in Sections IV.2 through IV.4 (“the Work”) of the USEPA AOC, in accordance with the schedules and deadlines set forth in the USEPA AOC.<sup>2</sup> All Work shall be performed using sound engineering practices.
- (b) Invensys shall continue to implement the “Work Plan for Interim Outfall Monitoring and Evaluation of Water Quality and Flow in Drain Lines,” which is attached as Exhibit A to the USEPA ACO and Exhibit B to the MassDEP Consent Order and incorporated in the MassDEP Consent Order (“the Work Plan”).
- (c) Invensys shall complete all work described in Section 3 of the Work Plan (“the Drain Line Flow and Water Quality Analysis”) by May 31, 2017.
- (d) Invensys shall submit to MassDEP for review and comment the Interim Monitoring Results and Engineering Evaluation Report (“the Report”) described in Section 4 of the Work Plan by August 31, 2017. The Report shall include the identification of recommended BMPs, remedial measures

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<sup>2</sup> A copy of the USEPA AOC is contained in Exhibit A to the MassDEP Consent Order.

and pollution control technologies for meeting the NPDES Permit's effluent limits, and a detailed schedule for implementation of recommended BMPs, remedial measures and pollution control technologies. The schedule included in the Report shall be incorporated in and enforceable under the MassDEP Consent Order.

- (e) In order to achieve compliance with the effluent limits in the NPDES Permit, Invensys shall implement the recommended BMPs, remedial measures, and pollution control technologies recommended in the Report in accordance with the schedule contained therein. All recommended BMPs, remedial measures and pollution control technologies shall be implemented by August 31, 2019.
- (f) Except as provided in ¶¶ 25 and 26 of the MassDEP Consent Order, by May 31, 2020, Invensys shall comply with the effluent limits in the NPDES Permit.
- (g) If Invensys determines, based on the information in the Report and/or based on information developed during implementation of the recommended BMPs, remedial measures, and pollution control technologies that additional time beyond any of the deadlines specified in the UEP AOC and the MassDEP Consent Order is needed to comply with any of the requirements of the MassDEP Consent Order, Invensys shall request an extension of such deadline(s) by submitting a written request to MassDEP, together with an explanation of why additional time

is needed and any information supporting the determination and request. MassDEP may request additional information from Invensys to facilitate its evaluation of the request. MassDEP will consider the request for extension and provide Invensys with a written decision on the request. In the event MassDEP denies the request, in whole or in part, MassDEP's response shall set forth the reasons upon which the denial is based.

- (h) If Invensys determines, based on the information in the Report and/or based on information developed during implementation of the recommended BMPs, remedial measures, and pollution control technologies that such information supports modification of any of the terms of the NPDES Permit, Invensys may request any such modification by submitting a written request to MassDEP, together with a detailed explanation of why any such NPDES Permit modification is appropriate and any information supporting the determination and request. MassDEP may request additional information from Invensys to facilitate its evaluation of the request. If Invensys submits a request for modification, MassDEP will consider the request for a NPDES Permit modification and any other relevant information. MassDEP will provide Invensys with a written decision on the request. In the event MassDEP denies the request, in whole or in part, MassDEP will provide a written response setting forth the reasons upon which the denial is based in accordance with 314 CMR

2.10. Invensys has reserved its right to appeal any such denial to the OADR pursuant to 314 CMR 2.08(2) and 310 CMR 1.01.

- (i) Before May 31, 2020, Invensys shall implement the interim monitoring Requirements described in the Work Plan in lieu of the NPDES Permit monitoring requirements. Until May 31, 2020, Invensys shall submit a monthly DMR report that summarizes the monitoring required by the Work Plan in hard copy form in accordance with Section D.1.c of the NPDES Permit, in lieu of the requirements contained in Section D.1.a and D.1.b of the NPDES Permit. Unless the monitoring requirements of the NPDES Permit are modified pursuant to Section 26 of the MassDEP Consent Order and Section IV.8 of the USEPA AOC, beginning on May 31, 2020, Invensys shall implement all monitoring requirements of the NPDES Permit and comply with all NPDES Permit conditions and limits.
- (j) Invensys shall comply with all requirements of the NPDES Permit with the exception of, until May 31, 2020 only, (1) the DMR Reporting requirements of Section D.1.a and D.1.b of the NPDES Permit, as described in Section IV.8 of the MassDEP Consent Order, and (2) Parts 1.A.1.a and 1.A.1.b of the NPDES Permit, except that, with respect to monitoring of the Outfall 001 and 002 discharges, Invensys shall comply with all laboratory minimum quantification levels and laboratory testing methodologies specified in the NPDES Permit. Invensys shall comply with

all other conditions specified in the NPDES Permit but not addressed in the USEPA AOC or the MassDEP Consent Order.

(3) In accordance with ¶ 24 of the MassDEP Consent Order, after reviewing any report, notification, documentation, or submittal that is required to be submitted by Invensys to MassDEP pursuant to the MassDEP Consent Order, MassDEP may in writing provide comments on the submission.

(4) In accordance with ¶ 25 of the MassDEP Consent Order, Invensys shall submit to MassDEP copies of all written quarterly progress reports (“Quarterly Reports”) also required to be sent the USEPA under the USEPA AOC. A Quarterly Report is due by the 28<sup>th</sup> day of the month following the end of one quarter year (January to March, April to June, etc.), and Quarterly Reports shall be submitted until completion of all work described in Paragraphs IV.2 through IV.4 of the USEPA AOC, and the requirements of Section IV.5 of the USEPA AOC have been met for a period of six (6) consecutive months. Quarterly Reports shall include:

- a. A description of the actions which have been taken toward achieving compliance with the USEPA AOC since the previous Quarterly Report; and
- b. An assessment of the effectiveness of such actions in achieving compliance with effluent limits in the NPDES Permit, including all monitoring data supporting the assessment; and
- c. A description of the actions expected to be taken during the next reporting period in order to achieve compliance with the MassDEP Consent Order.

(5) In accordance with ¶ 27 of the MassDEP Consent Order, all reporting requirements set forth in the MassDEP Consent Order do not relieve Invensys of its obligation to submit any other reports or information as requirement by State, Federal, or local law.

(6) In accordance with ¶ 28 of the MassDEP Consent Order, within thirty (30) days after Invensys has satisfied the terms of the USEPA AOC and the MassDEP Consent Order by successfully completing the Work described in Sections IV.2 through IV.4 of the USEPA AOC and meeting the requirements of Section IV.5 of the USEPA AOC for a period of six (6) consecutive months, Invensys shall submit to MassDEP for review, a Final Report that includes:

- a. A description of all of the actions which have been taken toward achieving compliance with the USEPA AOC and the MassDEP Consent Order;
- b. An assessment of the effectiveness of such actions in controlling pollutants of concern and in minimizing events of non-compliance with the NPDES Permit; and
- c. An analysis of whether additional actions beyond the scope of the USEPA AOC and the MassDEP Consent Order are necessary to prevent further NPDES Permit violations.

(7) In accordance with ¶ 29 of the MassDEP Consent Order, if, after reviewing of the Final Report, MassDEP determines that all requirements of the USEPA AOC and the MassDEP Consent Order have been satisfied, MassDEP will provide notice to Invensys and the MassDEP Consent Order shall be deemed terminated. If the MassDEP determines that any of the Work set forth in ¶¶ IV.2 through IV.4 of the USEPA AOC have not been successfully performed by Invensys and/or that Invensys has not met the requirements of Section IV.5 of the USEPA AOC



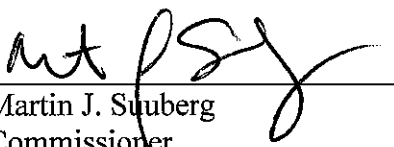
for six (6) consecutive months, MassDEP will notify Invensys, provide a list of the deficiencies, and may require Invensys to correct such deficiencies. If so required, Invensys shall correct such deficiencies and shall submit a modified Final Report in accordance with the MassDEP notice.

(8) In accordance with §§ 38, 39, 39A, and 39B of the MassDEP Consent Order, if Invensys violates any provision of the MassDEP Consent Order, Invensys shall pay stipulated civil administrative penalties to the Commonwealth as follows:

For each day, or portion thereof, of each violation, Invensys shall pay stipulated civil administrative penalties in the following amounts:

Period of Violation	Penalty per day
1st through 15th days	\$ 500.00 per day
16th through 30th days	\$ 750.00 per day
31st day and thereafter	\$1,000.00 per day.

(9) In accordance with § 31 of the MassDEP Consent Order, G.L. c. 30A, and 310 CMR 1.01(8)(c), Invensys's OADR appeal is dismissed with the parties waiving whatever rights they may have to further administrative review before MassDEP as well as any appeal to Court.

  
Martin J. Stueberg  
Commissioner

## **SERVICE LIST**

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