

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF)	DOCKET NO.
)	CWA-AO-R01-FY17-10
Board of Water and Sewer Commissioners)	
Town of Bridgewater, Massachusetts)	
NPDES Permit No. MA0100641)	
)	ADMINISTRATIVE ORDER
Proceedings under Sections 308(a) and)	ON CONSENT
309(a)(3) of the Clean Water Act,)	
as amended, 33 U.S.C. §§ 1318 and)	
1319(a)(3))	

I. STATUTORY AUTHORITY

The following Findings are made and Administrative Order on Consent ("Consent Order") issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a)(3). Section 309(a)(3), 33 U.S.C. § 1319(a)(3), of the Act grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 308(a), 33 U.S.C. § 1318(a), of the Act authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to the EPA, Region I Administrator, and in turn to the Director of the EPA, Region I Office of Environmental Stewardship ("Director of OES").

The Consent Order herein is based on findings of violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. MA0100641. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Consent Order provides a schedule which the Director of OES has determined to be reasonable.

II. DEFINITIONS

Unless otherwise defined herein, terms used in this Consent Order shall have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder, and any applicable NPDES permit. For the purposes of this Consent Order, “NPDES Permit” means the Board of Water and Sewer Commissioners Town of Bridgewater, Massachusetts NPDES Permit, No. MA0100641, and all amendments and modifications thereto, and renewals thereof, as are applicable and in effect at the time.

III. FINDINGS

The Director of OES makes the following findings of fact:

1. The Town of Bridgewater (the “Town”), established under the laws of the Commonwealth of Massachusetts, is a “municipality” as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4). The Town’s Water and Sewer Board is responsible for recommending all improvements to the Town’s wastewater disposal facilities.
2. The Town is a person under Section 502(5) of the Act, 33 U.S.C § 1362(5). The Town is the owner and operator of a wastewater treatment facility (the “WWTF”), from which it discharges pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Town River.
3. The Town River flows into the Taunton River which flows into Mt. Hope Bay which are all “navigable waters” under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
4. On September 30, 2016, the Director of the Office of Ecosystem Protection of EPA Region 1 (“Director of OEP”) issued NPDES Permit No. MA0100641 (the “Permit”) to the Town, which authorizes the Town to discharge pollutants from Outfall 001 subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit. For Outfall 001, the Permit includes, among other requirements, limits for flow, BOD, TSS, pH, total residual chlorine, *Escherichia Coli* (“*E. Coli*”), copper, phosphorus, dissolved oxygen, ammonia-nitrogen, total nitrogen and whole effluent toxicity.

5. In November 2016, the Town filed with the EPA Environmental Appeals Board (“EAB”) and Region 1 a Petition for Review of the Permit under federal regulations governing NPDES permit appeals.¹ In its Petition, the Town sought EAB review of, among other things, the NPDES Permit’s effluent limits for nitrogen, phosphorus, and pH, as well as the compliance schedule and monitoring requirements, principally based on the Town’s affordability concerns. The filing of the Petition for Review stayed the effect of the contested provisions of the NPDES Permit pursuant to 40 C.F.R. § 124.16(a). Since the Town’s Petition for Review was filed, and EAB issued its December 16, 2016 Order granting the Town’s Stay Motion for a finite period of time, EPA and the Town have engaged in negotiations in an effort to reach a resolution of issues raised in the Petition for Review.
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
7. Part I.A.1 of the 2003 Permit establishes a seasonal monthly average, effluent concentration limitation for total ammonia-nitrogen of 3.0mg/l that is in effect from April 1st through October 31st annually.
8. Data the Town has provided to EPA on its Discharge Monitoring Reports demonstrate that the Town is discharging ammonia-nitrogen in excess of the limits contained in the 2003 Permit.
9. The Town’s discharges of pollutants in excess of the limits contained in the 2003 Permit violate the conditions of the NPDES Permit and, therefore, violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

¹ On November 15, 2016, EPA Region 1 filed a Motion to Dismiss the Petition for Review as untimely, which is still pending before the EAB. The Motion was based on the Town’s alleged failure to file the Petition with the EAB within the timeframe prescribed by federal regulations. The Town opposes the Motion and its rationale. Therefore, the dates for service and filing are subject to dispute by the parties. On December 5, 2016, the Town filed, *inter alia*, a Motion for Stay and for Accelerated Decision (“Stay Motion”). Therein, the Town asked the Board to stay its ruling on the Region’s motion to dismiss.

IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, the Parties agree, and it is hereby ordered that the Town shall:

1. Within six months of the Effective Date of this Order, the Town shall submit an Affordability Analysis to EPA and MassDEP, related to the costs of implementing the nitrogen and phosphorus controls described below. In addition to other relevant information the Town provides, the Affordability Analysis shall include, and the Town will provide to EPA and MassDEP:
 - a. An itemized listing of the residential, commercial, industrial, and public accounts and the related average annual daily flow contributions of each, with respect to the Town's sewered population;
 - b. For each year analyzed, provide total revenue collected from residential, commercial, industrial and public users;
 - c. For each year analyzed, provide a reconciling of the total flow billed with the total flow reported at the treatment plant;
 - d. Provide a searchable electronic excel data base on a DVD or compact disk(s) of the Town's user charge quarterly billing (if billed on a quarterly basis, or if not, as appropriate) for the most recently available quarter. The records shall be separated into residential, commercial, industrial and public categories and shall include the following information:
 - i. Street address of billed property;
 - ii. Volume of water that served as the basis for the quarterly charge;
 - iii. Number of housing units that comprised the account; and
 - iv. User charge that was billed for the quarter.

The electronic data base shall be accompanied by an explanation of the basis of the user charge calculation for each category of user and shall include the total annual revenues raised for each category of user. If there are any additional sources of wastewater account revenues not included above, include those, and their basis for collection as well.

2. Within 2 years of the Effective Date of this Consent Order, complete planning efforts, including the Town's Comprehensive Wastewater Master Plan ("CWMP") and Value Engineering Study.
3. Within 2 years of the Effective Date of this Consent Order, achieve a pH range of 6.5 – 8.3 S.U.
4. Within 3.5 years of the Effective Date of this Consent Order, complete nitrogen pilot testing, preliminary and final design of WWTP upgrades to meet the total nitrogen Permit limit of 60 lbs/day.
5. Within 5 years of the Effective Date of this Consent Order, complete construction of WWTP upgrades and attain operational levels and comply with the effluent limits for total nitrogen of 60 lbs/day.
6. Within 8.5 years of the Effective Date of this Consent Order, complete phosphorus pilot testing, preliminary and final design of WWTP upgrades to meet the phosphorus Permit limit of 200ug/l.
7. Within 10 years of the Effective Date of this Consent Order, complete construction of WWTP upgrades and attain operational levels and comply with the effluent limits for phosphorus of 200ug/l.
8. From the Effective Date of this Consent Order, with regard to the grab sample recorded for dissolved oxygen (DO) and pH at Hayward Street, the sample may be taken at 2:00pm.
9. The schedules described in Part IV of this Consent Order shall be incorporated and enforceable hereunder, and as amended by the Parties or EPA as described in Part VI.
10. All work pursuant to this Consent Order shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Town's Collection System and WWTP complies with the CWA.

Interim Limits

11. From the effective date of this Consent Order until the date the improvements implemented pursuant to Part IV.3 (for pH), Part IV.5 (for total nitrogen) and Part IV.7 (for phosphorus) are fully operational, the Town shall comply with the interim effluent limitations and monitoring requirements contained in Attachment #1 of this Consent Order.

12. The Town shall comply with all other effluent limitations, monitoring requirements and other conditions specified in the Permit for the parameters not covered in Attachment #1.

Reporting Requirements

13. The Town shall submit semi-annual reports to EPA summarizing its compliance with the provisions of this Consent Order. Progress reports shall be submitted on, or before, April 15th and October 15th of each year. Each progress report submitted pursuant to this paragraph shall: a) describe activities undertaken during the reporting period directed at achieving compliance with this Consent Order; b) identify all plans, reports, and other deliverables required by this Consent Order that have been completed and submitted during the reporting period; c) describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Consent Order; and d) identify any anticipated or potential areas of noncompliance with this Consent Order.

V. NOTIFICATION PROCEDURES

1. Where this Consent Order requires a specific action to be performed within a certain time frame, the Town shall submit a written notice of compliance or noncompliance with each deadline. Notification shall be mailed within 14 days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.
2. If noncompliance is reported, notification should include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the Town to comply with the lapsed schedule requirements;
 - c. A description of any factors that explain or mitigate the noncompliance; and
 - d. An approximate date by which the Town will perform the required action.
3. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting all required documents or providing EPA with a written report indicating that the required action has been achieved. Submissions required by this Consent Order shall be in writing, and sent via email, and shall be mailed/emailed to the following addresses:

U.S. Environmental Protection Agency
Region 1, New England
Office of Ecosystem Protection
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Attn: Betsy Davis (Mail Code: OEP06-1)
Davis.Betsy@epa.gov

and

U.S. Environmental Protection Agency
Region 1, New England
Office of Environmental Stewardship
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Attn: Dave Turin (Mail Code: OES04-3)
Turin.David@epa.gov

and

Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attn: Susannah L. King
susannah.king@state.ma.us

VI. GENERAL PROVISIONS

1. The Parties recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by the Town in accordance with this Consent Order do not constitute an admission of fault or liability. The Parties have voluntarily entered into this Consent Order in lieu of alternatives available to the Parties, including litigation. The Town does not admit, and retains the right to controvert in any subsequent proceeding other than proceedings to implement or enforce this Consent Order, the validity of the findings of fact, conclusions of law, and determinations in Sections III, IV and V of this Consent Order. The Town agrees to comply with and be bound by the terms of this Consent Order and further agrees that it will not contest the basis or validity of this Consent Order or its terms as specified herein.
2. This Consent Order does not constitute a waiver or a modification of the terms and conditions of the Permit. The Permit remains in full force and effect. EPA reserves the

right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Consent Order. The Parties agree that nothing in this Consent Order precludes the Town from seeking a waiver or a modification of the terms and conditions of the Permit.

3. The Town waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Town may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of this Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
4. If at any time the Town believes it has sufficient new information to justify a revision of the compliance schedule set forth herein, including but not limited to information derived from the above-described Affordability Analysis, the Town may submit the information to EPA and MADEP. The agencies will review the information and will give due consideration to a request by the Town to further extend the compliance schedule based on affordability concerns.
5. The EPA may, at its sole discretion, grant extensions of the compliance schedule/deadlines set forth herein by written notice to the Town, without further formal amendment to the Order on Consent.
6. Any material modification to the terms of this Consent Order shall be by written agreement of the Parties. Any nonmaterial modifications to the terms of this Consent Order, such as approval of modifications to submissions to EPA and MADEP, or the due dates of such submissions, shall be effective upon written approval from EPA and notification to:

Michael Dutton, Town Manager
Town of Bridgewater, Massachusetts
Municipal Office Building
66 Central Square
Bridgewater, MA 02324

7. This Consent Order shall become effective on the Effective Date of the Permit as set forth in the Final Permit Decision for NPDES Permit No. MA0100641, and to which Final Permit Decision this Consent Order shall be attached as Attachment 1.

04/06/2017
Date

4/5/17
Date

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
Environmental Protection Agency, Region I

[Signature]
Michael Dutton, Town Manager
Town of Bridgewater, Massachusetts

ATTACHMENT #1

Interim Effluent Limits and Monitoring Requirements

The Town shall comply with the following interim effluent limits and monitoring requirements from the effective date of the Order until the date the applicable improvements implemented pursuant to Paragraph IV of this Order are fully operational or by the date that EPA determines that the Town has not complied with the milestones set forth in this Order, whichever is earlier.

	<u>Concentration</u>		<u>Frequency</u>	<u>Type</u>
	<u>Average Monthly</u>	<u>Daily Maximum</u>		
Total Phosphorus April 1 st through October 31 st	1.0 mg/l 12 lbs/day	Report	1/Week	24-Hour Composite
Total Nitrogen May 1 st through October 31 st	Report	Report	2/Week	24-Hour Composite
pH Range	6.0–8.3 S.U.		1/Day	Grab