

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

IN THE MATTER OF	)	DOCKET NO. 10-002
City of Marlborough Massachusetts	)	
NPDES Permit No. MA0100498	)	FINDINGS OF VIOLATION
	)	
	)	AND
	)	
Proceedings under Section 309(a)(3)	)	ORDER FOR COMPLIANCE
of the Clean Water Act, as amended,	)	
33 U.S.C. §1319(a)(3)	)	

I. STATUTORY AUTHORITY

The following Findings are made and 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 and 1319(a)(3). Section 309(a)(3) of the Act grants 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) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to EPA Region I's Administrator, and in turn to the Director of EPA, Region I's Office of Environmental Stewardship ("Director").

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. §1311, and the conditions of NPDES Permit No. MA0100498. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. §1319(a)(5)(A), the Order provides a schedule for compliance which the Director has determined to be reasonable.

## II. DEFINITIONS

Unless otherwise defined herein, terms used in this 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 Order, "NPDES Permit" means the City of Marlborough's NPDES permit, No. MA0100498, and all amendments or modifications thereto, and renewals thereof, as are applicable and in effect at the time.

## III FINDINGS

The Director makes the following findings of fact:

1. The City of Marlborough, Massachusetts (the "City" or "Permittee") is a municipality established under the laws of the Commonwealth of Massachusetts. The City is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. §1362(4).
2. The City is a person under Section 502(5) of the Act, 33 U.S.C §1362(5). The City is the owner and operator of Publicly-Owned Treatment Works, including a wastewater treatment facility (the "Easterly Facility") from which it discharges pollutants, as defined in Section 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 Hop Brook, a class B waterway. The Easterly Facility is designed to discharge an average monthly flow of 5.5 million gallons per day ("MGD") of treated wastewater to Hop Brook. Hop Brook flows into the Sudbury River, which flows to the Concord River, which flows into the Merrimack River, which flows to the Atlantic Ocean, all of which are navigable waters under Section 502(7) of the Act, 33 U.S.C. §1362(7).
3. On September 16, 2004, the City was reissued the NPDES Permit for the Easterly Facility by the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP") under the authority of Section 402 of the Clean Water Act, 33 U.S.C. §1342. This authority has been delegated to EPA's Regional Administrators and has in turn been delegated to the Director of OEP.



4. Part I.A.1. of the NPDES Permit includes water quality based limits for Phosphorus and Part I.E. includes a compliance schedule for achieving the Phosphorus limits. The Phosphorus limits and compliance schedule were never put into effect as a result of permit appeals and an August 11, 2005 remand from the Environmental Appeals Board (“EAB”). The EAB issued a decision in a petition for review filed by the Town of Sudbury that remanded the summer seasonal Phosphorus limit of 0.1 mg/l and denied the petition for review in all other respects.
5. On October 19, 2006, the NPDES Permit was modified in response to the remand. The effective date of the NPDES Permit modification is December 19, 2006 and the expiration date is January 16, 2010.
6. The modified NPDES Permit authorizes the City to discharge pollutants from a point source at the Easterly Facility to Hop Brook subject to the effluent limitations, monitoring requirements and other conditions specified in the Permit.
7. 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.
8. The modified NPDES Permit contains a 0.1 mg/l Phosphorus limit for April through October and a 0.75 mg/l Phosphorus limit for November through March.
9. The modified NPDES Permit established a schedule for compliance with the Phosphorus limits. The schedule allowed 78 months from the effective date for completion of construction of necessary treatment upgrades and compliance with the 0.1 mg/l Phosphorus limit. The schedule also contained interim compliance dates, including 12 months from the effective date to initiate planning for the necessary treatment upgrades to submit a status report, and 24 months from the effective date to initiate design of the necessary treatment upgrades. The modified NPDES Permit also contains an interim Phosphorus limit of 0.5 mg/l for April through October.
10. Easterly Facility monitoring data submitted by the City for the period April 2007 through October 2008 shows the interim Phosphorus limit of 0.5 mg/l has been exceeded on

several occasions during that time period. Phosphorus is a pollutant, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§1362(6) and (12).

11. Additionally, the City has not complied with the interim date for initiation of design of the Easterly Facility and submitting required status reports.
12. The City's discharge of pollutants from the Easterly Facility to Hop Brook in excess of the limits contained in the NPDES Permit and the City's failure to comply with the required schedule have occurred in violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

#### IV. ORDER

Accordingly, it is hereby ordered that the Permittee shall:

1. By February 1, 2010, initiate planning and design of the treatment facility upgrades necessary to comply with the Phosphorus limits in the NPDES Permit.
2. By October 15, 2011, complete design of the treatment facility upgrades necessary to comply with the Phosphorus limits in the NPDES Permit.
3. By May 1, 2012, initiate construction of the treatment facility upgrades necessary to comply with the Phosphorus limits in the NPDES Permit.
4. By January 31, 2014, complete construction of the treatment facility upgrades necessary to comply with the Phosphorus limits in the NPDES Permit.

#### REPORTING

5. Through January 2014, the City shall provide by each July 1 and January 1 a report identifying what steps the Permittee undertook to comply with this order in the previous six months and what steps the Permittee will undertake in the following six months to comply with this Order.

## V. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the Permittee shall submit a written notice of compliance or noncompliance with each deadline. Notification must be mailed within fourteen (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 Permittee 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 Permittee will perform the required action.After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
3. Submissions required by this Order shall be in writing and should be mailed to the following addresses:

U.S. Environmental Protection Agency  
Region I  
5 Post Office Sq., Suite100  
Mailcode: OES04-03  
Boston, MA 02109-3912  
Attn: Douglas Koopman

and

Massachusetts Department of Environmental Protection  
Central Region  
627 Main Street  
Worcester, MA 01608  
Attn: Robert Kimball

## VI. GENERAL PROVISIONS

1. This Order does not constitute a waiver or a modification of the terms and conditions of the NPDES Permit. The NPDES 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 Order.
2. This Order shall become effective upon receipt by the Permittee.

12-10-09  
Date

Sam Silverman, acting for  
Susan Studlien, Director  
Office of Environmental Stewardship  
Environmental Protection Agency, Region I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

IN THE MATTER OF	)	DOCKET NO. 10-001
City of Marlborough Massachusetts	)	
NPDES Permit No. MA0100480	)	FINDINGS OF VIOLATION
	)	
	)	AND
	)	
Proceedings under Section 309(a)(3)	)	ORDER FOR COMPLIANCE
of the Clean Water Act, as amended,	)	
33 U.S.C. §1319(a)(3)	)	

I. STATUTORY AUTHORITY

The following Findings are made and 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 and 1319(a)(3). Section 309(a)(3) of the Act grants 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) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to EPA Region I's Administrator, and in turn to the Director of EPA, Region I's Office of Environmental Stewardship ("Director").

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. §1311, and the conditions of NPDES Permit No. MA0100480. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. §1319(a)(5)(A), the Order provides a schedule for compliance which the Director has determined to be reasonable.

## II. DEFINITIONS

Unless otherwise defined herein, terms used in this 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 Order, "NPDES Permit" means the City of Marlborough's NPDES Permit, No. MA0100480, and all amendments or modifications thereto, and renewals thereof, as are applicable and in effect at the time.

## III FINDINGS

The Director makes the following findings of fact:

1. The City of Marlborough, Massachusetts (the "City" or "Permittee") is a municipality established under the laws of the Commonwealth of Massachusetts. The City is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. §1362(4).
2. The City is a person under Section 502(5) of the Act, 33 U.S.C §1362(5). The City is the owner and operator of Publicly-Owned Treatment Works, including a wastewater treatment facility (the "Westerly Facility") from which it discharges pollutants, as defined in Section 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 Assabet River, a class B waterway. The Westerly Facility is designed to discharge an average monthly flow of 2.89 million gallons per day ("MGD") of treated waste water to the Assabet River. The Assabet River flows into the Concord River, which flows into the Merrimack River, which flows to the Atlantic Ocean, all of which are navigable waters under Section 502(7) of the Act, 33 U.S.C. §1362(7).
3. On May 26, 2005, the City was reissued NPDES Permit No. MA0100480 ("the NPDES Permit") for the Westerly Facility by the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP") under the authority of Section 402 of the Clean Water Act, 33 U.S.C. §1342. This authority has been delegated to EPA's Regional Administrators and has in turn been delegated to the Director of OEP. As a result of the NPDES Permit being appealed, the effective date of the NPDES Permit is November 25, 2005. It will expire on November 25, 2010. The NPDES Permit supersedes the permit issued on December 14, 2000.



4. The NPDES Permit authorizes the City to discharge pollutants from a point source at the Westerly Facility to the Assabet River subject to the effluent limitations, monitoring requirements and other conditions specified in the Permit.
5. 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.
6. Part I.A.1. of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated wastewater from outfall serial number 001. The effluent limitations include, among other things, water quality based monthly average concentration limits for total aluminum and total phosphorus.
7. Part I.H. includes a compliance schedule for achieving the total phosphorus limits.
8. The NPDES Permit establishes seasonal limits for the discharge of total phosphorus. The limit for the period from April 1<sup>st</sup> to October 31<sup>st</sup> is 0.1 milligrams per liter (mg/l). The limit for the period from November 1<sup>st</sup> to March 31<sup>st</sup> is 1.0 mg/l.
9. The NPDES Permit established a schedule for compliance with the total phosphorus limits. The schedule allowed 12 months from the effective date for compliance with the winter period total phosphorus limit of 1.0 mg/l and 54 months from the effective date for compliance with the April 1<sup>st</sup> to October 31<sup>st</sup> total phosphorus limit of 0.1 mg/l. The schedule also contained interim dates for completion of design for the necessary treatment upgrades (24 months) and for initiation of construction of the necessary treatment upgrades (30 months). The effective date for total phosphorus was May 17, 2006, in accordance with the resolution of the appeals.
10. Since June 2005, the City has discharged wastewater containing total phosphorus and total aluminum, pollutants as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§1362(6) and (12), in excess of the concentration limits contained in the NPDES Permit.
11. Additionally, the City has not complied with the interim dates for completion of design and initiation of construction of the Westerly Facility.
12. The City's discharge of pollutants from the Westerly Facility to the Assabet River in excess of the limits contained in the NPDES Permit and the City's failure to comply with

the required schedule have occurred in violation of the NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

#### IV. ORDER

Accordingly, it is hereby ordered that the Permittee shall:

1. By January 11, 2010, complete design and initiate construction of the necessary treatment facility upgrades to achieve the total phosphorus limits and the total aluminum limits in the NPDES Permit.
2. By February 28, 2011, complete construction of phosphorus removal facilities and comply with the total phosphorus and total aluminum limits in the NPDES Permit.
3. By July 11, 2012, complete construction of the remaining facility upgrades for the Westerly Facility.
4. By January 30, 2009, provide EPA with a report (the "Phosphorus Report") which recommends necessary improvements, including estimated costs to use the Alum chemical feed system during the winter months in order to comply with cold weather phosphorus limit.
5. If by July 1, 2010 construction on the Westerly Plant upgrades has not begun, install and operate any equipment and controls identified in the "Phosphorus Report" necessary to meet the November through March phosphorus limits contained in the NPDES Permit by November 1, 2010.

#### REPORTING

6. Through December 2012, the City shall provide by each July 1 and January 1 a report identifying what steps the Permittee undertook to comply with this order in the previous six months and what steps the Permittee will undertake in the following six months to comply with this Order.

## V. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the Permittee shall submit a written notice of compliance or noncompliance with each deadline. Notification must be mailed within fourteen (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 Permittee 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 Permittee will perform the required action.After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
3. Submissions required by this Order shall be in writing and should be mailed to the following addresses:

U.S. Environmental Protection Agency  
Region I  
5 Post Office Sq., Suite 100  
Mailcode: OES04-3  
Boston, MA 02109-3912  
Attn: Douglas Koopman

and

Massachusetts Department of Environmental Protection  
Central Region  
627 Main Street  
Worcester, MA 01608  
Attn: Robert Kimball



## VI. GENERAL PROVISIONS

1. This Order does not constitute a waiver or a modification of the terms and conditions of the NPDES Permit. The NPDES 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 Order.
2. This Order shall become effective upon receipt by the Permittee.

12-10-09  
Date

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