

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Town of Wayland

File No.: ACO-NE-12-1N001

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, MA 01887.
2. The Town of Wayland ("Respondent") is a Municipal Corporation in the Commonwealth of Massachusetts. Respondent has a mailing address of 41 Cochituate Road, Wayland, MA 01778. Respondent owns and, acting through its Wastewater Management District Commission ("WWMDC")¹, operates a wastewater treatment works, which includes a wastewater treatment facility located at 430 Boston Post Road in Wayland, MA and an associated wastewater collection system.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21, §§ 26-53, the Surface Water Discharge Permit Regulations at 314 CMR 3.00; the Ground Water Discharge Permit Regulations at 314 CMR 5.00; and the Sewer System Extension and Connection Permit Regulations at 314 CMR 7.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent has been issued a National Pollutant Discharge Elimination System ("NPDES") surface water discharge permit ("NPDES Permit") jointly by the Environmental Protection Agency ("EPA") and MassDEP to discharge treated effluent which discharges to the Sudbury River, in accordance with the terms and conditions of that permit. The NPDES permit

¹ The Wayland Wastewater Management District Commission ("WWMDC"), established by c. 461 of the Special Acts of 1996, is a board of the Respondent. For purposes of this Consent Order, WWMDC has the same mailing address as Respondent.

was issued on September 30, 2008, and was later modified on October 9, 2009. It remains valid as of the date of issuance of this ACO.

5. The following facts and allegations have led MassDEP to issue this Consent Order:
- A. The NPDES Permit includes an actual measured effluent flow limit of 0.052 million gallons per day ("mgd"), as a rolling 12-month average.
 - B. On September 21, 2007, a Draft WWTP Assessment Study (the "Study") was completed by Metcalf & Eddy Engineers, on behalf of the WWMDC, through an agreement with Twenty Wayland, LLC, which has development interests in the community. The Study included a list of then-existing and projected sewer connections, along with associated design flows, which reflected a total allocated Title V design flow capacity of 77,527 gallons per day for the WWMDC sewer system. Based on the results of the Study, MassDEP expressed concern that the WWTP is oversubscribed, which could result in an exceedance of the effluent flow limit set forth in the NPDES Permit. The Study also concluded that the existing WWTP "appears to be at the end of its useful life", and that a new \$4 million WWTP is to be constructed to meet the Town's needs for wastewater management and to meet the requirements of the Town's NPDES Permit.
 - C. On August 23, 2010, MassDEP approved the design plans for the construction of a new wastewater treatment plant. The plant is designed to meet the effluent flow limits required under the Town's NPDES Permit.
 - D. On November 22, 2010, MassDEP received a sewer connection permit application from Twenty Wayland, LLC, seeking a MassDEP sewer connection permit for the proposed Town Center Development Project, located at 400 Boston Post Road in Wayland, MA. The application requested connection of 45,000 gallons per day of wastewater design flows to the WWMDC treatment works. The application was signed and approval recommended by Fred Knight, chairman of the WWMDC.
 - E. On May 19, 2011, in response to numerous requests from concerned parties, MassDEP held a public hearing on the sewer connection permit at Town Hall in Wayland, to solicit public comments on the sewer connection permit application.
 - F. On June 7, 2011, MassDEP issued a sewer connection permit to Twenty Wayland, LLC, based on a review of the application, technical information provided, and public comments received. Since DEP was concerned that the full design flow of the Town Center Project could result in an exceedance of the discharge capacity limit under the Town's NPDES Permit, the MassDEP sewer connection permit included a number of special conditions intended to ensure compliance with the terms and conditions of the NPDES Permit. Special Condition No. 1 of the MassDEP sewer connection permit provides:

1. This permit authorizes a discharge of up to 45,000 gallons per day (gpd) from the project specified within the permit, subject to the following phasing and restrictions:
- a) While the permittee may construct facilities to collect and convey wastewater from the Twenty Wayland LLC project site to the Wayland Wastewater Management District Commission (WWMDC) treatment facility, no wastewater may be discharged, until such time as the work to upgrade the WWMDC treatment facility is completed, unless otherwise approved by MassDEP in writing.
 - b) Phase I of the Twenty Wayland LLC project shall be limited to 28,000 gallons per day (gpd) in design flow, as included in the permit application and documented below:

Use	Flow basis	Units	Flow (gpd)
Supermarket	97 gpd/1,000 ft ²	45,000 ft ²	4,365
Office	75 gpd/1,000 ft ²	10,000 ft ²	750
Retail	50 gpd/1,000 ft ²	52,700 ft ²	2,635
Restaurant	35 gpd/seat	350 seats	12,250
Residential	110 gpd/bedroom	72 bedrooms	8,000
		Total Flow:	28,000 gpd

- c) Phase II of the Twenty Wayland LLC project includes the discharge of an additional 17,000 gpd of design flows. The permittee may request MassDEP approval to connect discharges from Phase II at any time after establishing actual wastewater flows from Phase I, subject to the sole discretion of MassDEP as to the satisfactory documentation of actual flows and compliance with 314 CMR 7.00. Any request for approval to connect flows from Phase II shall include, at a minimum, the following information:

- i. A detailed summary of actual flows from Phase I facilities and associated occupancy, which shall be collected over a period adequate to characterize average and peak flows from the Phase I facilities.
- ii. A summary of flow data from the WWMDC treatment facility to document remaining treatment facility capacity.
- iii. A summary of design flows for Phase II facilities, which shall be limited to a total of 17,000 gpd of additional flow.

MassDEP's determination to approve or deny the request to connect flows from Phase II of the Twenty Wayland LLC project will rely on any and all issues considered essential to ensuring compliance of the WWMDC treatment facility with its National Pollutant Discharge Elimination System (NPDES)

discharge permit, or any draft or final WWMDC groundwater discharge permit. This review will include, but not be limited to, actual average day and peak day flows at the treatment plant; actual flows from the Twenty Wayland LLC Phase I project; design flows associated with projects which have received approval from WWMDC and/or MassDEP for future connections to the treatment facility; construction of facilities to support a groundwater discharge permit; issuance of a groundwater discharge permit to WWMDC; and compliance history of the WWMDC facility with the terms and conditions of its NPDES permit.

- G. On August 25, 2011, Fred Knight, Chair of the WWMDC, submitted via email to MassDEP a Proposal for Additional Capacity for the WWMDC. The Proposal affirmed three goals: to speed the development of the Town Center Project; to encourage economic development; and to spread infrastructure costs among as many users as possible. The Proposal outlined a strategy of pursuing a groundwater discharge facility at the site adjacent to Wayland Town Hall at 41 Cochituate Road in Wayland ("Town Hall site").
- H. On May 21, 2012, the Respondent submitted to MassDEP a Hydrogeological Report for the Town Hall site. The submittal and subsequent MassDEP approval of this Report are a prerequisite for submitting a groundwater discharge permit application for the site, pursuant to 314 CMR 5.09.
- I. On October 26, 2012, MassDEP approved the Hydrogeological Report for the Town Hall site, and authorized the Respondent to submit an application for a groundwater discharge permit.
- J. On November 7, 2012, flows from the WWMDC collection system were connected to the new WWMDC wastewater treatment plant, and new outfall to the Sudbury River.
- K. The September 2012 WWMDC Discharge Monitoring Report submitted by the Respondent reported the average daily flow for the month to be 21,998 gallons per day and the 12-month running average effluent flow to be 17,045 gallons per day.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

- 6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations

set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

- A. On or before January 22, 2013, the Respondent shall submit a MassDEP BRP WP79 application for a groundwater discharge permit. The application shall include all supporting materials as specified under 314 CMR 5.09A. MassDEP will process the permit application in accordance with timelines established in 310 CMR 4.10(m)(3), and will make efforts to expedite the review more quickly if resources allow.
- B. On or before January 22, 2013, the Respondent shall provide an updated, written list of existing connections to, and projected connections to the WWMDC system, in accordance with the design flows pursuant to 314 CMR 7.15.
- C. With each Discharge Monitoring Report submitted in accordance with the requirements of the Respondent's NPDES Permit, the Respondent shall clearly note the current 12-month rolling average effluent flow, the daily flow for each day of the month, and shall provide a listing of any new connections made to the WWMDC treatment works, and the associated design flow pursuant to 314 CMR 7.15.
- D. Within 30 days of when the average daily flows from the Respondent's WWTP exceed 80% of the NPDES Permit average daily flow limit (41,600 gallons per day) for a consecutive 120 day period, the Respondent shall submit to MassDEP for review and approval a schedule for construction of the groundwater discharge facilities at the Town Hall site, and wastewater treatment works operations protocols so that flows will be managed in accordance with the requirements of both the NPDES permit and the MassDEP groundwater discharge permit.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Kevin Brander, P.E.
Section Chief
Wastewater Management Section
DEP/NERO
205B Lowell Street
Wilmington, MA 01887

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
11. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.
12. This Consent Order may be modified only by written agreement of the parties hereto.
13. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
14. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
15. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.
16. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.
17. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
18. If respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1000.00 (one thousand dollars) per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

19. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

20. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to WWMDC wastewater treatment works for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

21. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

22. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to Paragraphs 8 through 21 of this Consent Order.

23. The undersigned certify that they are full authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.


24. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
Town of Wayland

By: 

Frederic E. Turkington, Jr., duly authorized
Town Administrator
Town of Wayland
41 Cochituate Road
Wayland, MA 01778

Date:

And by: 

Frederick Knight, Chair, WWMDC, duly authorized
Town of Wayland
41 Cochituate Road
Wayland, MA 01778

Date: January 10, 2013

Federal Employer Identification No.:

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Eric S. Worrall
Deputy Regional Director
MassDEP
205b Lowell Street
Wilmington, MA 01887

Date: ~~January 10, 2013~~
1/15/13 