

Consent Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:

TOWN OF NEEDHAM
MASSACHUSETTS

Proceedings under Section 309(a)(3)
of the Clean Water Act, as amended,
33 U.S.C. §1319(a)(3)

) DOCKET NO. 96-08
)
) FINDINGS OF VIOLATION
)
) AND
)
) ORDER FOR COMPLIANCE
)

STATUTORY AUTHORITY

The following findings are made and ORDER issued pursuant to Section 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §1319(a)(3). Section 309(a)(3) 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. This authority has been delegated to EPA's Regional Administrators.

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. §1311. 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 Regional Administrator has determined to be reasonable.

FINDINGS .

The Regional Administrator makes the following findings of fact:

1. The Town of Needham (the "Town") is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. §1362(4), established under the laws of the Commonwealth of Massachusetts, and, as such, is a person under Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. The Town is the owner and operator of separate stormwater drains, which collect, convey, and discharge stormwater to receiving waters. These drains discharge to the Charles River, a Class B waterway and navigable water under Section 502(7) of the Act, 33 U.S.C. §1362(7), and are point sources, as defined in Section 502(14) of the Act, 33 U.S.C. §1362(14).
3. On January 25, 1994, EPA issued an information request letter to the Town pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. §1318(a). The letter required that the Town submit information regarding dry weather discharges from its stormwater discharge pipes to EPA and the Massachusetts Department of Environmental Protection ("MADEP") by June 30, 1995. Dry weather was defined as a period of at least 72 hours in which there was no precipitation and no snow melt. The required information included;
 - a. Maps showing the location and size of each of the Town's stormwater discharge pipes, and the runoff area tributary

to each pipe.

- b. Visual observation of each of the Town's stormwater discharge pipes into the Charles River to determine whether the discharge is active during dry weather.
- c. Sampling of each of the active dry weather discharges for fecal coliform bacteria, among other pollutants, to determine whether the discharge contains pollutants which would indicate illicit connections to the system.
- d. A plan and schedule for eliminating the discharge of any pollutants during dry weather.

On May 18, 1995 EPA extended the submittal date to September 15, 1995.

4. On September 15, 1995, the Town of Needham submitted the required information. The information shows that:
 - a. The Town has 8 storm drains and two tributaries discharging to the Charles River during dry weather.
 - b. The dry-weather discharges from six of the storm drains and one tributary include fecal coliform bacteria in excess of Massachusetts Water Quality Standards. The discharges from storm drains which exceed water quality standards during dry weather are designated N1B, N1, N14B, N14, N19, and N22 (the "identified storm drains"). A description of these discharges and the fecal coliform bacteria measured in the discharges is shown on Attachment 1.
5. The dry-weather discharges of pollutants from storm drains

described in the preceding paragraph are not discharges of "storm water" as defined in 40 C.F.R. § 122.26 (b) (13).

6. Fecal coliform bacteria is a pollutant, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).
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. The Town of Needham is not authorized by an NPDES permit or any other provision of the Act to discharge pollutants from its storm drains. The dry-weather discharges described above are therefore a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER

Accordingly, pursuant to Section 309(a) (3) of the Clean Water Act, it is hereby ordered that the Town shall comply with the following schedule:

1. By April 30, 1996:
 - a. submit a list of any illicit connections or potential illicit connection locations resulting from the preliminary investigations.
2. By May 31, 1996:
 - a. obtain funding for conducting a comprehensive investigation ("the investigation") to determine the

sources of non-stormwater pollutants into the identified storm drains.

b. obtain partial funding for removal of illicit connections discovered during the investigation or make available the use of its own labor force for such removal work (an amount of at least twenty-five thousand dollars, or if carried out by its own labor force the equivalent value of labor and materials, shall be budgeted for this purpose).

3. By June 14, 1996 submit notification of the status of funding for items 2.a., and 2.b. above.

4. By July 1, 1996 execute a contract for completing the investigation.

5. By November 30, 1996:

a. complete the investigation and submit a report documenting the findings. The report shall include a list of illicit connections, the estimated flow from the connections, and the estimated cost of removing the connections.

b. the report shall also state whether the City believes that third parties are responsible for the work necessary to remove any of the illicit connections. If so, the report shall identify any such connections and describe the actions to be taken by the City to ensure that these connections are removed by December 31, 1997. The City shall thereafter take all actions necessary to ensure the

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removal of these connections by December 31, 1997.

- c. if the City believes that it is impossible to remove or ensure the removal of all illicit connections to the identified storm drains by December 31, 1997 despite all reasonable efforts, the November 30, 1996 report shall document why the City considers this to be the case, and the EPA and the City shall then discuss whether changes to this Order are appropriate.
 - d. the City may in some cases be entitled to reimbursement from third parties for the work necessary to remove illicit connections. Nothing in this Order shall be construed to make the City responsible for costs which would ordinarily be borne by third parties.
6. By February 28, 1997 complete the design of projects necessary to remove illicit connections to the identified storm drains.
 7. By May 31, 1997;
 - a. obtain funding for completing the removal of illicit connections to the identified storm drains.
 - b. submit a monitoring plan designed to demonstrate the removal of all illicit connections to the identified drains. The monitoring plan shall include an implementation schedule which will provide demonstrations, within 60 days of the date this order requires elimination of illicit connections (i.e. by March 2, 1998), as to whether all illicit connections have been removed. If EPA does not require modifications

to the plan, it shall be implemented as proposed. If EPA does require modifications to the plan, it shall be implemented as modified.

8. By June 14, 1997 submit notification of the status of funding for item 7(b) above.
9. By December 31, 1997 complete the removal of illicit connections to the identified storm drains.
10. By March 2, 1998 submit the results of the monitoring described in item 7.b. above for the identified drains.

NOTIFICATION PROCEDURES

1. Where this 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 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 Town to comply with the elapsed schedule requirements;

- c. A description of any factors which tend to explain or mitigate the noncompliance;
 - 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 requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
- Submissions required by this Order shall be in writing and should be mailed to the following addresses:

Harley Laing, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
JFK Federal Building - SEW
Boston, MA 02203
Attn: Water Technical Unit

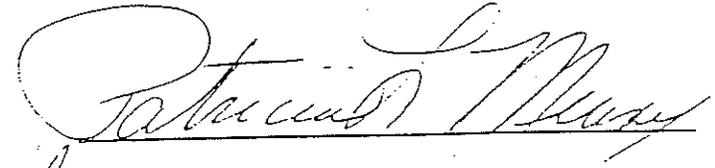
Massachusetts Department of Environmental
Protection
One Winter Street
Boston, MA 02108
Attn: Marcia Sherman

Massachusetts Department of Environmental
Protection
Northeast Region
10 Commerce Way
Woburn, MA 01103
Attn: David Ferris

GENERAL PROVISIONS

1. The Town may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the Town. The Town should read the above-cited regulations carefully before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the Clean Water Act provides that "effluent data" shall in all cases be made available to the public. See Section 308(b) of the Act, 33 U.S.C. § 1318(b).
2. This Order shall become effective upon receipt by the Town.

Date

4/9/96
John P. DeVillars
Regional Administrator
Environmental Protection Agency
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