

**United States Environmental Protection Agency
Region I - New England**

IN THE MATTER OF

Town of Uxbridge, Massachusetts
NPDES Permit No. MA0102440

Proceedings under Sections 308(a)
and 309(a)(3) of the Clean Water Act,
as amended, 33 U.S.C. §§ 1318
and 1319(a)(3)

DOCKET NO. 14-003

**FINDINGS AND
ORDER FOR COMPLIANCE
ON CONSENT**

I. STATUTORY AUTHORITY

The following FINDINGS are made and ORDER ON 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 and 1319(a)(3). Section 309(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) 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 the EPA, Region I Administrator, and in turn, to the Director of the EPA, Region I Office of Environmental Stewardship ("Director").

The Order herein is based on a finding that the Town of Uxbridge will be in violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. MA0102440 following the effective date of its previously stayed permit conditions. 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 that 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 Clean Water Act, 33 U.S.C. §§ 1251 *et. seq.*, the regulations

promulgated thereunder, and any applicable NPDES permit. The following additional terms are defined for purposes of this Order:

1. "NPDES Permit" and "Permit" mean the Town of Uxbridge's NPDES Permit No. MA0102440, and all amendments or modifications thereto and renewals thereof as are applicable, and in effect at the time.
2. "Reduced Flow Effluent Limits" mean the limits at Part I.A.1.a of the NPDES Permit.
3. "Design Flow Effluent Limits" mean the limits at Part I.A.1.b of the NPDES Permit.

III. FINDINGS

The Director of the Office of Environmental Stewardship makes the following findings of fact:

1. The Town of Uxbridge ("Town" or "Permittee"), Massachusetts 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.
2. The Town is a person under Section 502(5) of the Act, 33 U.S.C § 1362(5). The Town is the owner of a publicly-owned wastewater treatment works ("POTW") that includes a wastewater treatment facility ("WWTF") 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 Blackstone River. The Blackstone River flows into the Seekonk River, which joins the Providence River and discharges to Narragansett Bay and the Atlantic Ocean. All are waters of the United States as defined in 40 C.F.R. § 122.2 and are, therefore, navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. 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 a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
4. On June 17, 2013, the Director of the Office of Ecosystem Protection of EPA, Region I issued NPDES Permit No. MA0102440 ("NPDES Permit") to the Town,

under the authority given to the Administrator of EPA by Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

5. On July 19, 2013, the Permittee timely filed a Petition for Review of certain conditions of the NPDES Permit with EPA's Environmental Appeals Board ("EAB") pursuant to 40 C.F.R. § 124.19. The filing of the Petition for Review stayed the effect of the provisions of the NPDES Permit pursuant to 40 C.F.R. § 124.16(a).
6. EPA, the Town, and the Massachusetts Department of Environmental Protection ("MassDEP") commenced settlement negotiations while the appeal was pending before the EAB. As a result of these negotiations, the parties agreed to resolve the pending appeal of the NPDES Permit by taking a number of steps, including the following:
 - a. EPA issuance of this Order for Compliance, consented to by the Town;
 - b. The Town's submission of a motion to the EAB requesting dismissal of its appeal (NPDES Appeal No. 13-06) pursuant to 40 C.F.R. § 124.19(k); and
 - c. The Town's submission of a motion to MassDEP Office of Appeals and Dispute Resolution ("OADR") requesting dismissal of the state appeal.
7. Following the dismissal of the EAB appeal, EPA Region 1's Director of the Office of Ecosystem Protection will issue a "final permit decision" pursuant to 40 C.F.R. § 124.19(l)(2)(i), notifying the Permittee of the date on which NPDES Permit No. MA0102440, as issued in 2013, will take effect.
8. The NPDES Permit authorizes the Permittee to discharge pollutants from the POTW to the Blackstone River, subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.
9. Part I.A.1 of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated sanitary wastewater from outfall serial number 001.
10. Part I.A.1.a of the NPDES Permit sets forth Reduced Flow Effluent Limits which are applicable for the period in which the facility's annual average discharge is at or below an annual average flow limit of 1.25 MGD. The seasonal Reduced Flow Effluent Limits for Total Phosphorus are 4.2 lbs/day for April 1 to October 31 and 10 lbs/day and 1 mg/l for November 1 to March 31. The Reduced Flow Effluent

Limits for Total Aluminum are 1.81 lbs/day and 87 ug/l. The Reduced Flow Effluent Limits for E. coli for April 1 to October 31 are 126 cfu/100 ml (average monthly) and 409 cfu/100 ml (maximum daily). The Reduced Flow Effluent Limits for enterococci are 73 cfu/100 ml (average monthly) and 236 cfu/100 ml (maximum daily). The Reduced Flow Effluent Limits for Total Residual Chlorine are 0.24 mg/l (average monthly) and 0.42 mg/l (maximum daily).

11. Part I.A.1.b of the NPDES Permit sets forth the Design Flow Effluent Limits, which shall go into effect on the earlier of (i) the date identified by the Permittee that it expects to exceed the 1.25 MGD annual average flow, or (ii) 60 days after the first month in which the 1.25 MGD annual average flow is exceeded.
12. The Permittee discharges wastewater containing Total Aluminum and Total Phosphorus in amounts greater than the Reduced Flow Effluent Limits contained in the NPDES Permit.
13. The Permittee has advised EPA that it does not expect to be able meet the Reduced Flow Effluent Limits in the Permit for Total Phosphorus (April to October) and Total Aluminum without upgrades to its WWTF and that it may not be able to meet the Reduced Flow Effluent Limits for Total Phosphorus (November to May) and for enterococci and E. coli.
14. The Permittee has further advised EPA that, without significant upgrades, it is unable to meet the Design Flow Effluent Limits in the NPDES Permit, but also that it does not expect flows to exceed the Reduced Flow threshold of 1.25 MGD within the permit term.
15. The Permittee has further advised EPA that it is currently engaged in a planning process (developing a Comprehensive Waste Management Plan ("CWMP")), which will help it to determine what treatment plant design flow it will need to meet its sewerage needs over the planning period and what improvements to its aging WWTF will be necessary to meet effluent limits at the selected design flow.
16. The Permittee's discharge of Total Phosphorus, Total Aluminum, enterococci, and E. coli from the POTW to the Blackstone River in excess of the limits contained in its NPDES Permit, will violate Section 301(a) of the Act, 33 U.S.C. §1311(a).
17. EPA issues this Order for Compliance on Consent to provide a schedule

according to which the Permittee will take the steps necessary for it to come into compliance with the NPDES Permit.

IV. ORDER

Accordingly, pursuant to Section 309(a)(3) of the Clean Water Act, it is hereby ordered that:

1. By December 30, 2014, the Permittee shall submit an Optimization Report to EPA and MassDEP. The Optimization Report shall provide the following:
 - a. A summary of all phosphorus and aluminum data collected at the facility since September 1, 2013;
 - b. A detailed description of the efforts made to optimize plant operation in order to reduce phosphorus and aluminum discharges; and
 - c. A technical evaluation of the level of phosphorus and aluminum control which the plant can achieve, including a discussion of the factors affecting removal efficiency and the expected variability of the effluent concentrations.
2. By September 30, 2014, the Permittee shall submit a Bacteria Report to EPA and MassDEP. The Bacteria Report shall provide the following:
 - a. A summary of all enterococcus and E. coli data collected at the facility since September 1, 2013;
 - b. An evaluation of measures the Permittee will need to take to meet the Interim Limits for enterococcus and E. coli set forth in Attachment 2. The Permittee shall optimize operation of the existing disinfection facilities and evaluate implementation of a temporary dechlorination system. The Permittee shall consider increased winter flows and the practicability and need for a temporary dechlorination system that would operate seasonally (April through October) and one that would operate year-round. The Bacteria Report shall describe any constraints on the existing disinfection system, including hydraulic limitations, that may prevent meeting the interim bacteria limits in Attachment 2.
3. By December 15, 2015, the Permittee shall submit to EPA and MassDEP, the Comprehensive Wastewater Management Plan ("CWMP") required pursuant to

Part I.A.2.g of the NPDES Permit.

4. By October 15, 2016, the Permittee shall submit to MassDEP for approval the final design of the treatment facility upgrades necessary to comply with all effluent limits in the NPDES Permit, including, but not limited to, Total Phosphorus, Total Aluminum, E. coli, and enterococci.
5. By June 30, 2017, the Permittee shall initiate construction of the treatment facility upgrades necessary to comply with all effluent limits in the NPDES Permit, including, but not limited to, Total Phosphorus and Total Aluminum.
6. By December 31, 2019, the Permittee shall complete construction of those treatment facility upgrades that are necessary to comply with all effluent limits in the NPDES Permit, including, but not limited to, Total Phosphorus and Total Aluminum.
7. By June 1, 2020, the Permittee shall achieve full compliance with the NPDES Permit.

Interim Effluent Limits

8. From the effective date of this Order until the date Revised Interim Limits are established by EPA pursuant to Part IV.9 of this Order, the Order deadline for achieving compliance with all effluent limits in the NPDES Permit, or the date, if any, that EPA determines that the Town has not complied with any portion of this Order, whichever is earliest, the Town shall, at a minimum, comply with the monitoring requirements and interim effluent limitations for Total Phosphorus, Total Aluminum, and Fecal Coliform set forth in Attachment 1 of this Order.
9. EPA will review the data and information submitted by the Permittee in the Optimization Report and, following consultation with the Permittee, may develop Revised Interim Limits for Total Phosphorus and/or Total Aluminum which shall be incorporated and enforceable hereunder upon written notification to the Permittee by EPA.
10. From the effective date of this Order until the date Revised Interim Limits are established by EPA pursuant to Part IV.11 of this Order, the Order deadline for achieving compliance with all effluent limits in the NPDES Permit, or the date, if any, that EPA determines that the Town has not complied with any portion of this

Order, whichever is earliest, the Town shall also comply with the monitoring requirements and interim effluent limitations for E. coli, enterococci, and Total Residual Chlorine set forth in Attachment 2 of this Order.

11. EPA will review the data and information submitted by the Permittee in the Bacteria Report and, following consultation with the Permittee, may develop revised average monthly or maximum daily interim limits for Enterococci, E. coli, and Total Residual Chlorine which shall be incorporated and enforceable hereunder upon written notification to the Permittee by EPA.
12. The Permittee shall also comply with all effluent limitations, monitoring and reporting requirements, and other conditions specified in the NPDES Permit but not addressed in Attachments 1 or 2 of this Order.

Compliance Reporting

13. Until the Permittee achieves full compliance with the NPDES Permit, beginning July 31, 2014 and each July 31st and January 31st thereafter, the Permittee shall submit a report to EPA and MassDEP on the performance of its obligations under this Order ("Semiannual Report"). Each Semiannual Report shall include a description of:
 - a. Activities undertaken during the reporting period directed at achieving compliance with this Order;
 - b. A summary of the status of all plans, reports, and other deliverables required by this Order; and
 - c. Activities expected to be completed during the next reporting period in order to achieve compliance 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) calendar 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.
3. 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. Submissions required by this Order shall be in writing and shall be mailed to the following addresses:

United States Environmental Protection Agency
Region I – New England
5 Post Office Square - Suite 100
Boston, MA 02109-3912
Attn: Doug Koopman (Mail Code: OES04-3)

with a copy electronically or by mail to both:

US EPA New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Attn: Michael Curley (Mail Code: OES04-3)
curley.michael@epa.gov

and

Massachusetts Department of Environmental Protection
Northeast Region Main Office
205B Lowell Street
Wilmington, MA 01887
Attn: Claire Golden
claire.golden@state.ma.us

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 dismissal of the EAB and OADR appeals, as described in Part III.6 of this Order.
3. The Town waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708, but not with respect to its compliance with this Order or issues or facts not covered within this Order.

Date

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

Consented to by:

Date

Thomas F. Rice, Chairman
Uxbridge Sewer Commission

ATTACHMENT 1

Interim Effluent Limits and Monitoring Requirements

1. From the effective date of this Order until the earliest of: (a) the date Revised Interim Limits are established by EPA pursuant to Part IV.9 of this Order, (b) the date for achieving compliance with all effluent limits in the NPDES Permit, or c) the date, if any, that EPA determines that the City has not complied with any portion of this Order, the Town shall, at a minimum, comply with the following interim effluent limitations and monitoring requirements:

	Mass		Concentration		Monitoring Requirements	
	Avg. Monthly	Max. Daily	Avg. Monthly	Max. Daily	Frequency	Type
Total Phosphorus ¹ April 1 – October 31	6.0 lbs/day	***	Report mg/l	Report mg/l	2/week	24-Hour Composite ²
Total Phosphorus November 1 – March 31	Report lbs/day	***	3.5 mg/l	Report mg/l	2/week	24-hour Composite ²
Total Aluminum ¹	Report lbs/day	***	Report µg/l	Report µg/l	1/week	24-Hour Composite ²
Fecal Coliform Bacteria April 1, 2014 – October 31, 2014	***	***	200 cfu/100ml	400 cfu/100ml	2/week	Grab

¹ The limit is a 6-month rolling average limit. The first monthly average value to be used shall be September 2013.

² A 24-hour composite sample will consist of at least twenty-four (24) grab samples taken during a consecutive 24 hour period (e.g., 7:00 A.M. Monday to 7:00 A.M. Tuesday), either collected at equal intervals and combined proportional to flow or continuously collected proportionally to flow.

³ The permittee shall use best efforts to minimize the discharge of aluminum while optimizing phosphorus removal. Weekly monitoring for total aluminum shall occur on the same day as one of the phosphorus measurements.

ATTACHMENT 2

Interim Effluent Limits and Monitoring Requirements

- From the effective date of this Order until the earliest of: a) the date Revised Interim Limits are established by EPA pursuant to Part IV.11 of this Order, b) the date for achieving compliance with all effluent limits in the NPDES Permit, or c) the date, if any, that EPA determines that the City has not complied with any portion of this Order, the Town shall comply with the following interim effluent limitations and monitoring requirements:

	Mass		Concentration		Monitoring Requirements	
	Avg. Monthly	Max. Daily	Avg. Monthly	Max. Daily	Frequency	Type
Enterococci ¹ January 1, 2014 - March 31, 2015	***	***	Report cfu/100ml	Report cfu/100ml	1/week	Grab
Enterococci ¹ (Beginning April 1, 2015)	***	***	73 cfu/100ml ²	236 cfu/100ml	1/week	Grab
E. coli ¹ April 1, 2014 – October 31, 2014	***	***	Report cfu/100ml	Report cfu/100ml	2/week	Grab
E. coli ¹ (Beginning April 1, 2015) April 1 – October 31	***	***	126 cfu/100ml ²	409 cfu/100ml	2/week	Grab
Total Residual Chlorine	***	***	0.48 mg/l	0.83 mg/l	2/day ³	Grab

¹ Bacteria samples shall be collected concurrently with a Total Residual Chlorine sample.

² The limit is a 2-month rolling average. The Permittee shall report the geometric mean of all individual sample results from that calendar month and the previous calendar month.

³ Two samples per day Monday to Friday; one sample per Saturday, Sunday, and holidays.