



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

October 29, 2015

John D. Petrin, Town Administrator
Town of Burlington
29 Center Street
Burlington, Massachusetts 01803

RE: ADMINISTRATIVE CONSENT ORDER
ACO-NE-15-1N001

Dear Mr. Petrin:

Enclosed please find a copy of the executed Administrative Consent Order (the "ACO") addressing the Town of Burlington's noncompliance with 314 CMR 3.00 and 314 CMR 12.00. By consenting to this enforcement document, the Town of Burlington is obligated to comply with all the requirements of the ACO.

If you have any questions regarding this matter, please contact Kevin Brander, P.E. at 978-694-3236 or at kevin.brander@state.ma.us.

Sincerely,

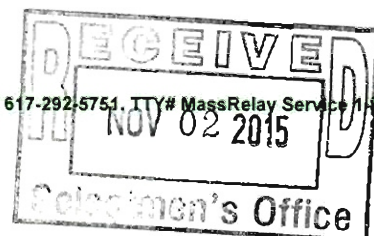
Rachel Freed
Deputy Regional Director
Bureau of Water Resources

RF/CAG/cg

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This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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

In the matter of:)
)
)
Town of Burlington)
_____)

File No.: ACO- NE-15-1N001

**ADMINISTRATIVE CONSENT ORDER
AND NOTICE OF NONCOMPLIANCE**

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 Burlington (the “Town”) is a municipal corporation in the Commonwealth of Massachusetts having a principal place of business and mailing address at 25 Center Street, Burlington MA 01803. The Town, owns, operates and maintains a municipal sewer system that collects and transports sewage and other wastes from properties connected thereto for ultimate treatment at Deer Island through the Horn Pond Sewer owned and operated by the City of Woburn and from there, through interceptors that are owned and operated by the Massachusetts Resources Authority (the “MWRA”).

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; and the Operations, Maintenance, and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers (the “O&M Regulations”) at 314 CMR 12.00. 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. The following facts and allegations have led MassDEP to issue this Consent Order:

- A. The Town's sewer system was constructed in 1966 and consists of approximately 115 miles of sewer pipe. The Town's sewer system serves a population of approximately 25,000 people.
- B. In addition to the residential, commercial, and industrial wastewater produced in the Town, significant volumes of extraneous groundwater and storm water enter the Town's sewer system, particularly during periods of wet weather and high groundwater. Infiltration enters the sewer system as a result of defects in various components such as pipes, joints, connections and manholes. Inflow also enters the sewer system through discrete sources such as illegal storm drain connections, sump pump connections, roof drain connections, catch basins and drains from areas of high groundwater.
- C. The infiltration and inflow in the Burlington sewer system contributes to surcharging in the Burlington sewer system, and in turn impacts surcharging in downstream sewers owned and operated by the City of Woburn and the Massachusetts Water Resources Authority (MWRA).
- D. Flows in excess of sewer capacity result in surcharging of the sewers and in some cases unpermitted overflows of sewage to waters of the Commonwealth. Wet weather related overflows have occurred from the Horn Pond Sewer owned and operated by the City of Woburn into Horn Pond, a water of the Commonwealth. Overflows have occurred into Horn Pond during a number of wet weather events, including events on May 14, 2006; April 16, 2007; March 14, 2010; and March 29, 2010. Infiltration and inflow in the Burlington system has contributed to these overflows.
- E. Horn Pond is a Class B water body. Class B water bodies are designated as habitat for fish, other aquatic life and for primary and secondary contact recreation. The overflow of sewage into Class B waters such as Horn Pond threatens the environment and impairs the ability of this water body to maintain its designated uses. The overflow of sewage into Horn Pond also threatens drinking water wells adjacent to the Pond owned by the City of Woburn.
- F. To reduce the frequency and duration of overflows into Horn Pond, the Town of Burlington has discharged raw sewage to Vine Brook, a water of the Commonwealth. Unpermitted overflows have occurred at Vine Brook on numerous days during wet weather events, including May 14, 2006; April 12, 2008; December 12, 2008; March 14, 2010; March 30, 2010; and most recently on December 9 through December 10, 2014, with a volume of 740,000 gallons.
- G. Vine Brook is a Class B water body. Class B water bodies are designated as habitat for fish, other aquatic life and for primary and secondary contact recreation. Sewage discharges to Vine Brook also impact the downstream segment of the Shawsheen River, which is used a drinking water source for the Town of Burlington.

- H. Overflows of untreated sewage threaten the public health. Sewage contains a broad range of pathogens carrying waterborne diseases including hepatitis a, bacillary dysentery and giardiasis. When sewage is discharged into surface waters, these diseases and others may be transferred to individuals through insects and other animals that come into contact with the sewage, or through direct human exposure. When sewage is discharged to drinking water supplies, there is increased risk of human exposure to pathogens given the substantial increase in pathogens in the source water, which can compromise the effectiveness of water treatment systems.
- I. On July 25, 2001, the Town entered into an Administrative Consent Order (the "2001 Consent Order") with MassDEP in which it agreed to perform certain actions to reduce the inflow and infiltration into the sewer system. The 2001 Consent Order specifically required the Town to:
- i. *Implement a program to identify and remove infiltration and inflow (I/I) into the Town's sewer system;*
 - ii. *Complete and submit a Sewer System Evaluation;*
 - iii. *Complete and submit an Operation and Maintenance Manual;*
 - iv. *Submit a Sewer Connection Program to MassDEP which ensures that no additional connections to the Town's sewer system are allowed until the Town documents that ten gallons of I/I is removed from the sewer system for each gallon of new flow to be connected to the sewer;*
 - v. *Proper notification to MassDEP for any Sanitary Sewer Overflows (SSO) in the Town's sewer system; and*
 - vi. *Semiannual Reports documenting the status of the ACO work.*
- J. On March 16, 2006, MassDEP and the Town entered into an amendment to the 2001 Consent Order ("2006 Amendment") which altered a number of the requirements of the 2001 Consent Order. Specifically, the following modifications were incorporated into the 2001 Consent Order:
- i. *New connections to the sewer system were authorized if the Town ensured that four gallons of I/I are removed for each gallon of new flow to be connected (instead of ten gallons of I/I removal).*
 - ii. *SSO notifications must include notice not only to MassDEP, but also to the Department of Public Works and Boards of Health in the City of Woburn, and the Towns of Billerica and Bedford.*
 - iii. *A Draft Capacity, Management, Operation and Maintenance (CMOM) Plan was required to be submitted on or before July 1, 2006.*
 - iv. *A Final Capacity, Management, Operation and Maintenance (CMOM) Plan was required to be submitted on or before September 1, 2006.*

The remaining elements of the 2001 Consent Order remained in place.

- K. On December 26, 2007, the Town of Burlington and the City of Woburn executed a Memorandum of Understanding ("2007 MOU"), which set forth standard operating procedures each community will implement cooperatively "to minimize SSOs at Horn Pond and Terrace Hall locations."
- L. On September 8, 2014, the Town submitted to MassDEP three Reports detailing I/I investigations conducted in targeted areas in the Town: the November 2012 Phase 6 Sanitary Sewer Evaluation Survey (SSES); the February 2014 Evaluation of Localized Flooding Areas; and the March 2014 Phase 7 SSES. These Reports collectively recommended a number of I/I abatement construction projects:
- i. Sewer pipe testing and sealing of 7,427 feet of pipe;
 - ii. Root treatment of 1,216 feet of pipe;
 - iii. Lining of 1,205 feet of pipe;
 - iv. Grouting of 23 sewer service laterals;
 - v. Installation of 390 sewer manhole "dishes" to minimize inflow;
 - vi. Repair and/or lining of 501 sewer manholes; and
 - vii. Spot repairs at 5 sewer locations.
- M. On October 5, 2015, the Town of Burlington and the City of Woburn executed an Amendment to the Intermunicipal Agreement for Joint Use of Woburn's Sewerage System ("IMA Amendment"). Among the provisions of the IMA Amendment are that the Town of Burlington agrees to pay all costs for design and construction of the Repairs to the Horn Pond Interceptor up to a maximum amount of \$950,000.
- N. The Clean Waters Act, G.L.c. 21, sec. 43(2), provides: "No person shall discharge pollutants into waters of the Commonwealth, nor install, modify, operate or maintain an outlet for such discharge without a currently valid permit issued by the director. No person shall engage in any other activity that may reasonably be expected to result directly or indirectly in discharge of pollutants into waters of the commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection without a currently valid permit issued by the director, unless exempted by regulation of the director."
- O. The Surface Water Discharge Regulations, 314 CMR 3.03(1), provide: "No person shall discharge pollutants into surface waters of the Commonwealth without a currently valid permit from the Director pursuant to G.L.c. 21, sec. 43, and 314 CMR 3.00 unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate or maintain an outlet for such a discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03 and written approval from the Director for such activity."

P. The O&M Regulations, specifically the provisions of 314 CMR 12.03(7), state:

“No person responsible for the operation of treatment works shall permit wastes to bypass the wastewater treatment facility or any portion, unit or part thereof in violation of a discharge permit, except when approved by the Department due to design limitations. If bypassing due to an emergency condition occurs, the Department shall be notified immediately in accordance with 314 CMR 12.03(8). Such notification or its acknowledgement shall not be construed as permission by the Department to discharge wastes in contravention of the Massachusetts Water Quality Standards.”

Q. By engaging in an activity that causes or contributes to the unpermitted discharge of pollutants into Vine Brook and Horn Pond, the Town has violated, and continues to violate, the Clean Waters Act, G.L.c. 21, sec. 43(2), and the Surface Water Discharge Regulations, 314 CMR 3.03(1).

R. By allowing untreated sanitary sewage to overflow before it can be treated at the MWRA Deer Island Wastewater Treatment Plant, the Town has violated, and continues to violate, the Operation and Maintenance, and Pretreatment Regulations, 314 CMR 12.03(7).

S. The Clean Waters Act, G.L.c 21, sec. 44, provides that whenever it appears to MassDEP that there are discharges of pollutants without a permit, MassDEP may order the discharger to apply forthwith for a permit or to take other appropriate action.

III. DISPOSITION AND ORDER

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

5. 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. This Consent Order supersedes both the 2001 Consent Order and the 2006 Amendment in their entirety.

6. MassDEP’s authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

7. Respondent shall perform the following actions:

A. The Town shall operate its wastewater collection system, including wastewater pump stations, in accordance with 314 CMR 12.00.

- B. On or before March 1, 2016, the Town shall submit to MassDEP, for review and approval, design plans for the I/I rehabilitation work recommended collectively in the Phase 6 SSES, the Evaluation of Localized Flooding Areas, and the Phase 7 SSES.
 - C. On or before December 31, 2017, the Town shall complete the I/I rehabilitation work recommended collectively in the Phase 6 SSES, the Evaluation of Localized Flooding Areas, and the Phase 7 SSES, in accordance with the MassDEP approved design plans.
 - D. On or before January 31, 2018, the Town shall submit to MassDEP, for review and approval, a scope of work for an I/I Analysis, which shall include deployment of flow meters, reviews of MWRA metering data, pump station flow data, and other information as needed to quantify infiltration and inflow in the Town's sewer system.
 - E. On or before October 1, 2018, the Town shall submit to MassDEP, for review and approval, an I/I Analysis Report, which shall document a town-wide analysis of the sewer system, and recommendations for further work to identify and eliminate infiltration and inflow, along with a project schedule. Recommendations must include any and all measures needed to comply with 314 CMR 12.04(2). Failure to implement the recommended work, as approved by MassDEP, shall constitute a violation of this Consent Order.
 - F. On or before January 2nd and July 1st of each year the Town shall submit to MassDEP a report documenting all work conducted during the previous six months under this Consent Order and the work scheduled to be completed during the next six months.
8. Unless submitted via eDEP or except as otherwise provided herein, 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.

9. All engineering work performed pursuant to this Consent Order shall be under the general direction and supervision of a qualified professional engineer registered in Massachusetts experienced in wastewater management. Any contractual relationship between Respondent and the engineer for work required hereunder shall require the engineer, as a condition of the contract, to implement work consistent with the provisions of this Consent Order.

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. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. 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.

12. 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.

13. This Consent Order may be modified only by written agreement of the parties hereto.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. If respondent violates any provision of Paragraph 7 of this Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000 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.

20. 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.

21. 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 the Town's 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.

22. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to Paragraphs 7 and 20 of this Consent Order and MassDEP's issuance of a return to compliance letter stating that Respondent has completed the requirements of Paragraph 7.

In the Matter of: Town of Burlington
ACO-NE-15-1N001

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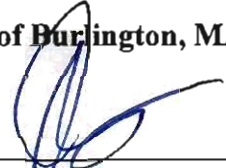
23. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

24. 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.

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

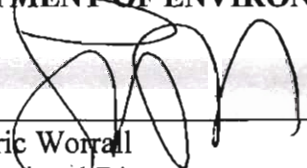
Consented To:

Town of Burlington, MA

By: 
John D. Petrin
Town Administrator
Town of Burlington, MA
29 Center Street
Burlington, MA 01803

Date: 10/20/15

**Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: 
Eric Worrall
Regional Director
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

Date: 10/28/15