



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

*Final*

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

FEB 09 2009

Honorable James J. Fiorentini  
City of Haverhill  
4 Summer Street  
Room 100  
Haverhill, MA 01830

Re: NPDES Permit No. MA0101621  
Administrative Order No. 09-014

Dear Mayor Fiorentini:

Enclosed is Administrative Order ("Order") Docket No. 09-014 issued to the City of Haverhill, Massachusetts ("City" or "Haverhill") pursuant to Sections 308 and 309(a)(3) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a)(3). The Order is based upon violations of the above-referenced National Pollutant Discharge Elimination System ("NPDES") permit and Section 301(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1311(a).

The NPDES permit and Section 301(a) of the Act prohibit wet weather combined sewer overflow ("CSO") discharges that cause water quality standards violations. Water quality standards violations attributable to Haverhill's CSOs were documented in the Draft Haverhill, Massachusetts Long-Term CSO Control Plan, prepared by Camp Dresser & McKee, September 2000. Untreated overflows from the City's collection system continue to occur and standards violations, therefore, also continue.

Administrative Order Docket No. 08-012 ("2008 Order"), among other things, required Haverhill to submit a draft Scope of Work for a Phase II CSO Long-Term Control Plan. The Massachusetts Department of Environmental Protection ("MassDEP") provided written comments on Haverhill's draft Scope of Work in a January 23, 2009 letter. EPA concurs with the MassDEP's comments, and issues this Order. The 2008 Order continues in full force and effect.

This Order requires the City to prepare and submit to EPA and MassDEP a draft Phase II CSO Abatement Program by August 1, 2011. The Phase II CSO Abatement Program must recommend a plan and a proposed schedule for

addressing all remaining CSO outfalls to result in full NPDES permit compliance and compliance with the Massachusetts' water quality standards as soon as practicable.

This Order also requires Haverhill: (1) to supplement the 24-hour verbal and 5-day written notifications of sanitary sewer overflow(s) and annual reports submitted under the 2008 Order to include the name of the receiving water for each reported overflow, and, if the overflow did not result in a discharge to a surface water, to identify the ultimate fate of the overflow; (2) to locate each overflow event included in the summary listing shall on a map of the City's wastewater collection system; (3) within thirty (30) days of receipt of this Order, to submit to EPA and MassDEP a description of the City's standard practices for addressing basement backups; and (4) to submit quarterly work progress/work projections reporting on Phase II CSO abatement program planning.

If you have any questions concerning the terms of this Order, please contact Joy Hilton of the Water Technical Unit at (617) 918-1877 or have your attorney contact Michael Wagner at (617) 918-1735.

Sincerely,

*Susan Studlien*

Susan Studlien, Director  
Office of Environmental Stewardship

Enclosure

cc: Robert Ward, Haverhill  
✓ Paul Jessel, Haverhill  
Nihar Mohanty, MA DEP-NERO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

IN THE MATTER OF:	)	DOCKET NO. 09-014
	)	
	)	FINDINGS OF VIOLATION
Haverhill, Massachusetts	)	
NPDES Permit No. MA0101621	)	AND
	)	
Proceedings under Sections 308 and	)	ORDER FOR COMPLIANCE
309(a)(3) of the Clean Water Act,	)	
as amended, 33 U.S.C. §§ 1318 and	)	
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 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 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 violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. MA0101621. 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 Haverhill's NPDES Permit, No. MA0101621, 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 Haverhill, Massachusetts ("City" or "Permittee") 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 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 a Publicly-Owned Treatment Works ("POTW") that includes a wastewater collection system consisting of approximately 92 miles of combined sewers and 143 miles of separate sewers ("Collection System"), a wastewater treatment facility ("WWTF") and 20 combined sewer overflow ("CSO") outfalls from which pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12), are discharged from point sources, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Merrimack and the Little Rivers.
3. The WWTF is an 18.1 million gallon per day ("MGD") secondary treatment facility that can provide primary treatment for a peak flow of up to 60 MGD. The WWTF discharges an average daily flow of 11.2 MGD of treated sewage to the Merrimack River.
4. 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, among other things, in compliance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

5. On December 5, 2007, the City was issued NPDES Permit No. MA0101621 ("NPDES Permit") by the Director of the Office of Ecosystem Protection of EPA, Region I, under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit became effective on April 1, 2008 and will expire on January 31, 2013.
6. The NPDES Permit authorizes the City to discharge pollutants from the WWTF outfall and from 20 CSO outfalls to the Merrimack and Little Rivers provided the discharges do not cause or contribute to violations of federal or state water quality standards.
7. The City's 20 CSO outfalls discharge an estimated annual volume of at least 26.5 million gallons of untreated sewage and storm water to the Merrimack and Little Rivers. The Merrimack and Little Rivers are Class SB and Class B waterways, respectively, and are navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
8. CSO monitoring data submitted by the City to EPA and the Massachusetts Department of Environmental Protection ("MassDEP") demonstrate that water quality standards for fecal coliform bacteria were exceeded due to CSO outfall discharges from the Permittee's combined sewer system.
9. The City has reported sanitary sewer overflow ("SSO") events from its Collection System to the MassDEP. These overflows resulted in the unauthorized discharge of pollutants from components of the Collection System other than the 20 permitted CSO outfalls and WWTF Outfall 046 to waters of the United States, including the Merrimack and Little Rivers, Snow's, Peabody, and Creek Brooks, Kenoza Lake and the Winnekinni Basin, and unnamed tributaries and wetlands.
10. The Permittee's discharge of sewage from the permitted CSO outfalls with bacteria levels that caused or contributed to levels of bacteria exceeding state water quality standards in the receiving water and its unauthorized discharges of pollutants to various waters of the United States occurred in violation of the NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

#### IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, it is hereby ordered that:

##### Phase II CSO Abatement Planning Requirements

1. By August 1, 2011, the City shall prepare and submit to EPA and the MassDEP for review a draft Phase II Long-Term CSO Control Plan ("draft Phase II LTCP"). The draft Phase II LTCP shall conform to the EPA's *Combined Sewer Overflow Policy*, 1994. The City shall also meet the requirements of M.G.L. c. 30, s. 61-62H and 301 CMR 11.00 *et. seq.* The draft Phase II CSO LTCP must recommend a plan and a proposed schedule for addressing all remaining CSO outfalls to result in full NPDES permit compliance and compliance with the Massachusetts' water quality standards as soon as practicable.

##### Capacity, Management, Operation and Maintenance ("CMOM") Program Implementation Report

2. For each written notification required within five days of the discovery of the sanitary sewer overflow ("SSO"), and for each annual report that the City of Haverhill is required to submit pursuant to EPA AO Docket No. 08-012, the SSO information provided to EPA and MassDEP shall be supplemented to include the name of the receiving water for each reported overflow. If the overflow did not result in a discharge to a surface water, identify the ultimate fate of the overflow. If the release occurred to the ground or street, the location of the nearest down gradient storm water catch basin and the name of the receiving water of the storm water collection system shall be noted in the written report and summary listing;
3. For each annual report that the City of Haverhill is required to submit pursuant to EPA AO Docket No. 08-012, the location of each overflow event included in the summary listing shall also be noted on a map of the City's wastewater collection system.

4. Within thirty (30) days of receipt of this Order, submit to EPA and MassDEP a description of the City's standard practices for addressing basement backups including, but not limited to, the assistance it provides to individual homeowners that report wastewater basement backups, the responsibility for pumping out basements that experience wastewater backups and the protocols followed by any of the City's departments that assist in the pumping of wastewater from basements. The description shall specifically note the ultimate disposition of the pumped wastewater, including whether it is collected and treated (the treatment location shall be provided) or discharged to the ground, street or surface water. The City shall note the differences, if any, in its practices and protocols based upon whether it is determined that the wastewater release occurred as a result of blockages and or capacity restrictions that occurred in publicly- or privately-owned sewers.

Quarterly Progress Reports and Work Projections.

5. Beginning with the quarter ending June 30, 2009 and continuing through the calendar quarter ending June 30, 2011, submit quarterly reports on the City's progress in implementing the provisions of this Order. The reports shall be submitted by the last day of the month following the calendar quarter monitoring period. At a minimum, these progress reports 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 that the City completed and submitted during the reporting period; and
  - c. Expected activities 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) 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 shall be mailed to the following addresses:

U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100 (SEW)  
Boston, MA 02114-2023  
Attn: Joy Hilton

and

Massachusetts Department of Environmental  
Protection  
Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887  
Attn: Nihar Mohanty

## VI. GENERAL PROVISIONS

1. The Permittee 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 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 Permittee. The Permittee should carefully read the above-cited regulations before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the 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 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.
3. Administrative Order Docket No. 08-012 continues in full force and effect.
4. This Order shall become effective upon receipt by the Permittee.

02/06/09  
Date

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