IN THE MATTER OF 

Town of Whitefield, New Hampshire 
NPDES Permit No. NH0100510 

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. CWA-AO-R01-FY16-11 
) FINDINGS OF VIOLATION 
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 findings of violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. NH0100510. Pursuant to Section 309(a)(5)(A) of the Act, § 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. For the purposes of this Order, "NPDES Permit" means the Town of Whitefield's NPDES Permit No. NH0100510, and all amendments or modifications thereto and renewals thereof as are applicable, and in effect at the time.

III. FINDINGS

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

1. The Town of Whitefield (the "Town" or "Permittee"), is a municipality, as described by Section 502(4) of the Act, 33 U.S.C. § 1362(4), established under the laws of the state of New Hampshire.

2. The Town is a person, as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5). The Town is the owner of a publicly-owned treatment works ("POTW") that includes an aerated lagoons 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 Outfall 001 which is a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Johns River. The Johns River flows into the Connecticut River, which flows into the Long Island Sound/Atlantic Ocean, all of which are "navigable waters" under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3. On September 26, 2014, the Director of the Office of Ecosystem Protection of EPA, Region I, reissued NPDES Permit No. NH0100510 ("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. The reissued NPDES permit became effective on December 1, 2014 and supersedes the permit issued on April 3, 2006.

4. The NPDES Permit authorizes the Permittee to discharge pollutants from the POTW to the Johns River, subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.

5. 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.
6. An Administrative Order was issued by EPA, Region 1 to the Town on January 16, 2009, requiring the Town to take specific actions in order to comply with all requirements of the April 3, 2006, permit no later than October 31, 2012.

7. Subsequent to the October 31, 2012 compliance deadline, the Town continues to periodically discharge treated wastewater from Outfall 001 to the Johns River containing biochemical oxygen demand ("BOD"), *E. coli* bacteria, total suspended solids ("TSS"), total recoverable copper, acute and chronic whole effluent toxicity, and pH levels in violation of permitted levels.

8. Part I.A.1. of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated wastewater from Outfall 001. In addition to the limits in the previous permit, the reissued permit establishes a monthly average total ammonia nitrogen limit of 21.5 mg/l from June 1 to October 31, a monthly average total phosphorus limit of 0.5 mg/l from April 1 to October 31, and a year-round monthly average total recoverable aluminum limit of 87 ug/l.

9. Subsequent to reissuance of the permit, the Town has discharged treated wastewater from Outfall 001 to the Johns River containing BOD, *E. coli* bacteria, TSS, total recoverable copper, acute and chronic whole effluent toxicity, and pH levels in violation of permitted levels and has been unable to comply with the new limits for total recoverable aluminum, total phosphorus and total ammonia nitrogen.

10. The Town’s discharges of pollutants from the WWTF Outfall 001 to the Johns River in excess of the limits contained in the NPDES Permit violate the permit and, therefore, Section 301(a) of the Act, 33 U.S.C. §1311(a).

11. Part II of the NPDES Permit requires the permittee to "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit…", and "take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment."
IV. ORDER

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

1. Within 12 months of the effective date of this Order, hire a licensed professional engineer to evaluate the current WWTF treatment system, including operation and maintenance practices. The evaluation shall include:
   a. identification of improvements/modifications to the existing WWTF treatment system that are necessary to ensure and maintain compliance with all NPDES Permit requirements; and
   b. establishment of written standard operation and maintenance procedures, including record keeping, for ensuring compliance with all NPDES Permit requirements; or alternatively,
   c. identification of options for eliminating the WWTF discharge to Johns River including a feasibility analysis.

2. Within 18 months of the effective date of this Order, submit a detailed report addressing the evaluations completed under Part IV.1. above to EPA, Region 1 and to the New Hampshire Department of Environmental Services ("NHDES").

3. Within 30 months of the effective date of this Order, complete design of WWTF treatment system improvements/modifications identified as necessary to ensure compliance with all NPDES Permit requirements, or alternatively, complete design of wastewater treatment/disposal facilities necessary for eliminating the discharge to the Johns River.

4. Within 36 months of the effective date of this Order, initiate construction of WWTF treatment system improvements/modifications identified as necessary to ensure compliance with all NPDES Permit requirements, or alternatively, initiate construction of wastewater treatment/disposal facilities necessary for eliminating the discharge to the Johns River.

5. Within 54 months of the effective date of this Order, achieve substantial completion of all necessary construction and achieve full compliance with all NPDES permit requirements.

6. Submit quarterly progress reports to EPA, Region 1 and to the NHDES.
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 electronically 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: Joy Hilton (Mail Code: OES04-3)
   Hilton.joy@epa.gov

   and

   New Hampshire Department of Environmental Services
   Wastewater Engineering Bureau
   29 Hazen Drive; PO Box 95
   Concord, New Hampshire 03302-0095
   Attn: Tracy Wood
   Tracy.Wood@des.nh.gov
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 signature by both parties.

3. The Town of Whitefield waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Town may have with respect to any issue of fact or law set forth in this Order, 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.

4. Any material modification to the terms of this Order shall be by written agreement of the Parties. Any nonmaterial modifications to the terms of this Order, such as approval of modifications to submissions to EPA and NHDES or the due dates of such submissions, shall be effective upon written approval from EPA.

5/26/16
Date

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

Consented to by:

5/23/16
Date

Wendy Hersom, Chairwoman
Whitefield Board of Selectmen