



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

JUN 24 2013

Mr. Russell Dean
Town Manager
10 Front Street
Exeter, NH 03833

Re: NPDES Permit No. NH0100871
Administrative Order on Consent Docket No. 13-010

Dear Mr. Dean:

Enclosed is the executed Administrative Order on Consent in the matter of the Town of Exeter, New Hampshire.

Sincerely,

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship

Enclosure

cc: Attorney Dana Bisbee
Tracy Wood, NHDES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:)	DOCKET NO. 13-010
)	
Town of Exeter, New Hampshire)	FINDINGS OF VIOLATION
NPDES Permit No. NH0100871)	
)	AND
Proceedings under Sections 308 and)	
309(a)(3) of the Clean Water Act,)	ADMINISTRATIVE ORDER ON
as amended, 33 U.S.C. §§ 1318 and)	CONSENT
1319(a)(3))	

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. NH0100871 and is issued with the consent of the Town of Exeter, New Hampshire. 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 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 Exeter's NPDES Permit, No. NH0100871, 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 Town of Exeter, New Hampshire ("Exeter" or "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 State of New Hampshire.
2. The Town is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5). The Town is the owner and operator of a Publicly Owned Treatment Works ("POTW"), which includes a wastewater collection system ("Collection System") and a wastewater treatment facility ("WWTF"), from which pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), are discharged to the Squamscott River.
3. The WWTF is a 3.0 million gallons per day ("MGD") secondary treatment facility that serves a population of approximately 10,000.
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 12, 2012, the Town was issued the NPDES Permit by EPA under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit became effective on March 1, 2013 and superseded a permit issued on July 5, 2000. The NPDES Permit expires on March 1, 2018.
6. The NPDES Permit authorizes the Town to discharge pollutants from WWTF Outfall 001, a point source as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Squamscott River subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.
7. The Squamscott River flows into Great Bay, which drains into the Piscataqua River, which flows into to the Atlantic Ocean. All are waters of the United States under Section 502(7) of the Act, 33 U.S.C. § 1362(7), and the regulations promulgated thereunder.
8. Part I.A.1.a. of the NPDES Permit requires that total nitrogen in the discharges from WWTF Outfall 001 not exceed 3.0 milligrams per liter (mg/l).
9. Nitrogen is a pollutant as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).
10. The Town routinely discharges effluent from WWTF Outfall 001 containing total nitrogen in excess of 3.0 mg/l.

11. The Town's routine discharges of effluent from WWTF Outfall 001 containing total nitrogen in excess of 3 mg/l occur in violation of the NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
12. In accordance with Exeter's town charter, the funding for the new wastewater treatment facilities referenced in Section IV.A below must be approved by the Exeter Town Meeting. The Exeter Board of Selectmen will pursue that approval at the earliest possible date.

IV. ORDER

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

A. WASTEWATER TREATMENT FACILITIES

1. By June 30, 2016, in accordance with New Hampshire Department of Environmental Services (NHDES) approval, the Town shall initiate construction of the wastewater treatment facilities necessary to achieve interim effluent limits set forth in Attachment 1.a of this Order.
2. By June 30, 2018, achieve substantial completion of construction of the WWTF in accordance with NHDES approval.

B. INTERIM EFFLUENT LIMITATIONS

1. From the effective date of this Order until the total nitrogen concentration limit included in Attachment 1.a of this Order becomes effective pursuant to Paragraph IV.B.2., below, the Town shall comply with the interim total nitrogen effluent limitations and monitoring requirements contained in Attachment 1 of this Order.
2. By June 30, 2019 or until 12 months after substantial completion of construction pursuant to Paragraph IV.A.2., above, whichever is sooner, the Town shall comply with the interim total nitrogen effluent limit and monitoring requirements contained in Attachment 1.a of this Order.
3. The interim limits in Attachment 1.a shall be in effect unless and until EPA determines that the Town has not complied with the milestones set forth in this Order. If and when EPA determines that the interim limits shall no longer remain in effect, the Town shall fund, design, construct and

operate additional treatment facilities to meet the NPDES Permit limit of 3.0 mg/l as soon as possible, and no later than 5 years from EPA's determination.

4. The Town shall operate the WWTF in a manner so as to maximize removal efficiencies and effluent quality, using all necessary treatment equipment available at the facility for optimization at the flow and load received but not requiring methanol or other carbon addition.

C. REPORTING (WASTEWATER TREATMENT FACILITIES)

1. Until July 15, 2018, the Town shall submit quarterly reports to EPA and the NHDES summarizing its compliance with the provisions of Paragraphs IV.A and IV.B of this Order. Progress reports shall be submitted on, or before, April 15th, July 15th, October 15th, and January 15th of each year. Each progress report submitted pursuant to this paragraph shall: a) describe activities undertaken during the reporting period directed at achieving compliance with this Order; b) identify all plans, reports, and other deliverables required by this Order that have been completed and submitted during the reporting period; and c) describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Order.

D. NON-POINT SOURCE AND STORMWATER POINT SOURCE ACTIVITIES

1. Upon the effective date of this Order, the Town shall begin tracking all activities¹ within the Town that affect the total nitrogen load to the Great Bay Estuary. This includes, but is not limited to, new/modified septic systems, decentralized wastewater treatment facilities, changes to the amount of effective impervious cover, changes to the amount of disconnected impervious cover², conversion of existing landscape to lawns/turf and any new or modified Best Management Practices.
2. Upon the effective date of this Order, the Town shall begin coordination with the NHDES, other Great Bay communities, and watershed organizations in NHDES's efforts to develop and utilize a comprehensive subwatershed-based tracking/accounting system for quantifying the total nitrogen

¹ Pertains to activities that the Town should reasonably be aware of, e.g., activities that involve a Town review/approval process or otherwise require a notification to the Town.

² Impervious cover includes pavement and buildings.

loading changes associated with all activities within the Town that affect the total nitrogen load to the Great Bay Estuary.

3. Upon the effective date of this Order, the Town shall begin coordination with the NHDES to develop a subwatershed community-based total nitrogen allocation.
4. By September 30, 2018, submit to EPA and the NHDES a total nitrogen non-point source and point source stormwater control plan ("Nitrogen Control Plan"), including a schedule of at least five years for implementing specific control measures as allowed by state law to address identified non-point source and stormwater Nitrogen loadings in the Town of Exeter that contribute total nitrogen to the Great Bay estuary, including the Squamscott River. If any category of de-minimis non-point source loadings identified in the tracking and accounting program are not included in the Nitrogen Control Plan, the Town shall include in the Plan an explanation of any such exclusions. The Nitrogen Control Plan shall be implemented in accordance with the schedules contained therein.

E. REPORTING

1. Beginning January 31, 2014 and annually thereafter, the Town shall submit Total Nitrogen Control Plan Progress Reports to EPA and the NHDES that address the following:
 - a. The pounds of total nitrogen discharged from the WWTF during the previous calendar year;
 - b. A description of the WWTF operational changes that were implemented during the previous calendar year;
 - c. The status of the development of a total nitrogen non-point source and storm water point source accounting system;
 - d. The status of the development of the non-point source and storm water point source Nitrogen Control Plan,
 - e. A description and accounting of the activities conducted by the Town as part of its Nitrogen Control Plan; and
 - f. A description of all activities within the Town during the previous year that affect the total nitrogen load to the Great Bay Estuary. The annual report shall include sufficient information such that the nitrogen loading change to the watershed associated with these

activities can be quantified upon development of the non-point source/point source storm water accounting system:

2. By December 31, 2023, the Town shall submit an engineering evaluation that includes recommendations for the implementation of any additional measures necessary to achieve compliance with the NPDES Permit, or a justification for leaving the interim discharge limit set forth in Attachment 1.a in place (or lower the interim limit to a level below 8.0 mg/l but still above 3.0 mg/l) beyond that date. Such justification shall analyze whether:
 - a. Total nitrogen concentrations in the Squamscott River and downstream waters are trending towards nitrogen targets;³
 - b. Significant improvements in dissolved oxygen, chlorophyll a, and macroalgae levels have been documented; and
 - c. Non-point source and storm water point source reductions achieved are trending towards allocation targets and appropriate mechanisms are in place to ensure continued progress.

V. 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) 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 shall 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 lapsed schedule requirements.
 - c. A description of any factors that 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-due requirement shall be reported by submitting any required documents or providing EPA and NHDES with a written report indicating that the required action has been achieved.

³ The Town shall account for precipitation in the trend analysis and baseline measurement.

4. 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: Joy Hilton, Water Technical Unit (Mail Code: OES04-3)

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
P.O. Box 95 - 29 Hazen Drive
Concord, NH 03302-0095
Attn: Tracy L. Wood, P.E.

VI. 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 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 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. The Town 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 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.

4. This Order shall become effective upon receipt by the Town.

06/20/13
Date

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

6/17/13
Date

Russell Dean
Russell Dean, Town Manager
Town of Exeter, New Hampshire

ATTACHMENT I

Interim Effluent Limits and Monitoring Requirements

	<u>Mass</u>		<u>Concentration</u>		<u>Frequency</u>	<u>Type</u>
	<u>Average Monthly (lbs/day)</u>	<u>Daily Maximum (lbs/day)</u>	<u>Average Monthly (mg/l)</u>	<u>Daily Maximum (mg/l)</u>		
Total Nitrogen ¹	Report	Report	Report	Report	1/Week	24-hour composite

¹ Total Nitrogen shall be calculated by adding the total kjeldahl nitrogen (TKN) to the total nitrate (NO₃-N) and nitrite (NO₂-N).

ATTACHMENT 1.a.

Interim Effluent Limits and Monitoring Requirements

	<u>Mass</u>		<u>Concentration</u>			<u>Type</u>
	<u>Average Monthly</u> (lbs/day)	<u>Daily Maximum</u> (lbs/day)	<u>Average Monthly</u> (mg/l)	<u>Daily Maximum</u> (mg/l)	<u>Frequency</u>	
Total Nitrogen ¹ November 1 st through March 31 st	Report	Report	Report	Report	1/Week	24-hour composite
Total Nitrogen ¹ April 1 st through October 31 st	Report	Report	8 mg/l ²	Report	1/Week	24-hour composite

¹ Total Nitrogen shall be calculated by adding the total kjeldahl nitrogen (TKN) to the total nitrate (NO₃-N) and nitrite (NO₂-N). The permittee shall optimize the operation of the treatment facility for the removal of total nitrogen during the period but not requiring methanol or other carbon addition.

² Calculated on a 214 day seasonal rolling average.