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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

MAR – 6 2013

Peter Rice, P. E.
Deputy Director of Public Works
City of Portsmouth
680 Peverly Hill Road
Portsmouth, NH 03801

Re: City of Portsmouth, New Hampshire
Consent Decree Docket No. 09-cv-283-PB

Dear Mr. Rice:

After reading your March 1, 2013 letter, Region 1 of the Environmental Protection Agency ("Region 1") wishes to clarify for you its understanding of the secondary treatment obligations that the Consent Decree, Docket No. 09-cv-283-PB ("Consent Decree"), imposes on the City of Portsmouth, New Hampshire ("City" or "Portsmouth").

Portsmouth has been in violation of its National Pollutant Discharge Elimination System ("NPDES") Permit No. NH0100234 (the "Permit") since the July 1, 2007 effective date. As you recall, when the Permit became effective Region 1 agreed with the City that an extended period of time was appropriate for the City to develop a wastewater master plan, including consideration of alternative locations for secondary treatment facilities. The City expressed an interest in also considering alternative technologies as well as various strategies for meeting potential future nutrient limits. A schedule was developed to allow for such an analysis. As you are aware, Region 1 has endeavored to give the City guidance on the probable limits in its next permit, particularly for nitrogen[1], but the Consent Decree does not contemplate that the City may delay

[1] At the meeting between the City, NHDES, and EPA, in December 2012, it was made clear that EPA's proposed nitrogen limit was a monthly average of 8 mg/l for the months of April through October, not a year round monthly average limit. The City requested that the limit be imposed on a seasonal average basis. There was extensive discussion on this issue and EPA agreed to consider it in completing the draft permit. We believe that any of the technologies piloted by the City will be able to attain a monthly average limit of 8 mg/l for the months of April through October.

implementation of the Consent Decree schedule until it receives a new, final permit. Because of the statutory process for the development of NPDES permit limits, it is not possible to establish with certainty what those limits will be. The effluent limits contained in the currently effective Permit are entirely unambiguous, however, and these are the limits with which the schedule in the Consent Decree requires compliance.

The City has proposed developing a wastewater treatment plant that will not provide secondary treatment to all flows expected to reach the plant during dry weather. You have explained to Region 1 staff that during certain weather conditions, ground water elevations result in flows to the treatment plant that exceed flows received at the plant during dryer seasons. It would be inconsistent with the Clean Water Act for the City to provide less than secondary treatment to such flows.

Over the past several years, Region 1 has consistently commented that large numbers of bypasses of secondary treatment facilities are inconsistent with the goals of the Clean Water Act as explained in the 1994 CSO Control Policy. Treatment systems must be designed to meet secondary limits for flows greater than the peak dry weather flow, plus an appropriate quantity of wet weather flow. Bypasses may not be subject to enforcement where it is either technically or financially infeasible to provide secondary treatment at the existing facilities for greater amounts of wet weather flow. Region 1 has indicated that constructing secondary treatment facilities that must be bypassed frequently in the near term might be acceptable if the City were to commit to conduct sufficient sewer separation to reduce the treatment plant flows to an amount that would reduce the number of bypasses to an acceptable number. For reference purposes, please be aware that CSO-related bypasses occur at the Nashua, New Hampshire and Manchester, New Hampshire facilities, but there is no relief provided to these facilities in their NPDES permits from secondary treatment limits or water quality-based effluent limits.

The City has been fully aware of these requirements for well over five years. Further, as you acknowledge in your letter, these issues have been the subject of discussions in the recent past for more than two years. Consequently, at this point Region 1 is unaware of any reason it should not seek to collect stipulated penalties if the City is unable to meet the Consent Decree milestones for designing and building a plant capable of providing secondary treatment to an adequate amount of the flows expected to reach the treatment plant.

If you have any questions or comments, please feel free to have your attorney contact Michael Wagner at (617) 918-1735.

Sincerely,

Denny Dart, Manager
Water Technical Unit

cc: Terry Desmarais, City Engineer, Portsmouth, NH
Tracy Wood, NHDES
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