UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTFIED MAIL – RETURN RECEIPT REQUESTED

MAR 0 6 2009

Daniel O'Neill, Manager
Town of Newport
15 Sunapee Street
Newport, NH 03773

Re: NPDES Permit No. NH0100200
Administrative Order Docket No. 09-015

Dear Mr. O'Neill:

Enclosed is an Administrative Order ("Order" or "AO") issued to the Town of Newport ("Town" or "Newport") for violations of the effluent limits contained in NPDES Permit No. NH0100200 ("NPDES Permit"). The Order specifically cites violations of the total phosphorus concentration limits contained in the Town's NPDES Permit as well as discharges of wastewater that violated the acute and chronic whole effluent toxicity ("WET") limitations.

Since July 1, 2007, Newport's wastewater treatment facility ("WWTF") has discharged total phosphorus in excess of the effluent limits contained in the NPDES Permit. These violations will continue unless modifications are made to the WWTF. We are aware of the difficult and complex issues that confront the Town. It is however, EPA's responsibility to ensure that municipalities achieve compliance with their NPDES permits as soon as practicable. Given the continued violations of your NPDES permit, the Town must act now to resolve its wastewater treatment problems.

Towards that end, EPA's Administrative Order requires that by December 31, 2009 the Town complete and submit a facilities plan that evaluates the upgrade of the WWTF. The facilities plan shall include recommendations and a proposed schedule for achieving compliance with the NPDES Permit by October 31, 2012. The design and construction schedule for the selected alternative, as approved by EPA, will be incorporated into the AO and enforceable thereunder. The Order includes interim limits for specific parameters that are effective from the date of the Town's receipt of the Order until the earliest of: (1) the date that the WWTF's improvements are fully operational; (2) October 31, 2012; or (3) EPA determines that the Town has not complied with the interim AO milestones.

The Order also requires the Town to submit a detailed report evaluating the WET test data and recommending corrective measures to eliminate violations of the WET limits of the NPDES Permit. Finally, the Order requires Newport to submit quarterly compliance status updates until it achieves compliance with its NPDES Permit limits.

Violation of the Order may subject the Town to further enforcement under Section 309 of the Clean Water Act, in which injunctive relief and penalties may be sought. Please contact Joy Hilton of my staff regarding any questions that you may have regarding the terms and conditions of the Order. She can be reached at (617) 918-1877.

Sincerely,

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship

Enclosure

cc: Tracy L. Wood, P.E., NHDES
Larry A. Wiggins, P.E., Public Works Director, Newport, NH
Arnold Greenleaf, WWTF Superintendent, Newport, NH

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF Newport, New Hampshire NPDES Permit No. NH0100200	)))))))	DOCKET NO. 09-015 FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE
Proceedings under Sections 308 and 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 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 Regional Administrator, and in turn to the Director of the Office of Environmental Stewardship (the "Director").

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. NH0100200. 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. FINDINGS

The Director makes the following findings of fact:

1. The Town of Newport (the "Town" 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 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 (the "POTW"), which includes a wastewater treatment facility (the "WWTF") from which pollutants, as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6), are discharged from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Sugar River. The WWTF is a 1.3 million gallon per day ("MGD") secondary treatment facility that discharges an average daily flow of 0.65 MGD of treated wastewater to the Sugar River. The Sugar River flows into the Connecticut River, which flows into Long Island Sound and the Atlantic Ocean. All are Class B waterways, waters of the United States as defined in 40 C.F.R. § 122.2, and navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. 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 an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
4. On April 18, 2007, the Town was issued NPDES Permit No. NH0100200 ("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 July 1, 2007 and expires on June 30, 2012.
5. The NPDES Permit authorizes the Town to discharge pollutants from the WWTF through a point source (Outfall No. 001) to the Sugar River, subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.

6. Section I.A.1. of the NPDES Permit includes effluent limitations for, among other things, total phosphorus, acute and chronic whole effluent toxicity ("WET"), E. coli, biochemical oxygen demand, and total suspended solids.

7. The WWTF was not designed to achieve phosphorus removal. Since July 2007, the Town has discharged wastewater containing total phosphorus in excess of the limits set forth in the NPDES Permit. Also, the Town's WWTF discharges have violated the acute and chronic whole effluent toxicity limits of the NPDES Permit.

8. The Permittee's discharges of pollutants in excess of the limits contained in the NPDES Permit violate the conditions of the NPDES Permit and, therefore, violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER

Accordingly, it is hereby ordered that:

1. Wastewater Treatment Facilities Upgrade

   a. By December 31, 2009, the Town shall evaluate and submit to EPA and the New Hampshire Department of Environmental Services (the "NHDES") a report regarding the capability of the WWTF's unit operations and processes ("WWTF Upgrade Facilities Plan") to comply with the NPDES Permit and shall identify the upgrades and process modifications required to meet the NPDES Permit's limits. The WWTF Upgrade Facilities Plan shall include an evaluation of the extraneous flows that enter the Town's collection system during wet weather and recommendations to address capacity issues associated with excessive infiltration and inflow.

   b. The WWTF Upgrade Facilities Plan shall also include a schedule for implementation of those recommendations that are required to achieve compliance with the NPDES Permit as soon as practicable, but no later than October 31, 2012 (the "Facilities Plan Implementation Schedule").

   c. The Facilities Plan Implementation Schedule submitted pursuant to Paragraph III.1.b. of this Order shall be incorporated and enforceable

hereunder upon their approval by, and as amended by, EPA and the Permittee shall thereafter meet the milestones contained therein.

d. The Town shall achieve compliance with the total phosphorus limits contained in the NPDES permit by no later than October 31, 2012.

2. Interim Effluent Limitations

a. From the effective date of this Order until the date the WWTF's improvements are fully operational or when EPA determines that the Town has not complied with the interim milestones set forth in this Order, the Town shall comply with the interim effluent limitations and monitoring requirements contained in **Attachment A** of this Order. The Permittee shall also comply with all effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit for the parameters not covered in **Attachment A**.

3. Whole Effluent Toxicity:

The Town shall:

a. By December 31, 2009, submit to EPA and the NHDES a detailed engineering report that recommends both short-term and long-term corrective measures and a schedule ("Corrective Action Plan Schedule") to comply with the WET limits of the NPDES Permit.

b. The Corrective Action Plan Schedule submitted pursuant to Paragraph III.3.a. of this Order shall be incorporated and enforceable hereunder upon the Corrective Action Plan Schedule's approval by, and as amended by, EPA.

4. Quarterly Progress and Work Projection Reports:

Beginning with the calendar quarter ending June 30, 2009 and continuing through the calendar quarter when the WWTF upgrade project is completed and fully operational or the WWTF discharge has been eliminated, the Town shall submit quarterly reports on the Town'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. The activities undertaken during the reporting period directed at achieving compliance with this Order;

b. The status of all plans, reports, and other deliverables required by this Order that the Town completed and submitted during the reporting period; and

c. The expected activities to be completed during the next reporting period in order to achieve compliance with this Order.

IV. 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 shall 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 shall 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 submitted to the following addresses:

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

and

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

V. 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 receipt by the Permittee.

03/06/09
Date

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

In the Matter of the Town of Newport, New Hampshire

ATTACHMENT A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (From the effective date of the Administrative Order until the earliest of: (1) the date the Facilities Plan improvements are fully operational; (2) October 31, 2012; or (3) when EPA determines that the Town has not complied with the interim milestones set forth in this Order.)

Effluent Characteristic	Discharge Limitations		Monitoring Requirements	
	Concentration			
	Average Monthly	Maximum Daily (specify units)	Measurement Frequency	Sample Type
Total Phosphorus November 1st through March 31st	3.1 mg/l	Report[1]	1/Week	Grab
Total Phosphorus April 1st through October 31st	3.7 mg/l	Report[1]	1/Week	Grab

[1] Report mg/l