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February 24, 2009

Secretary Ian A. Bowles
Executive Office of Energy
and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Attention: MEPA Office

RE: Town of Hopkinton Request for Advisory Opinion:
Sewer Connection to Milford Wastewater Treatment Plant

Dear Secretary Bowles:

Pursuant to the Massachusetts Environmental Policy Act ("MEPA") Regulations at 301 CMR 11.01(6), the Town of Hopkinton, acting through its Board of Public Works, seeks an Advisory Opinion as to whether the project described below requires MEPA review. For the reasons set forth in this letter, the Town does not believe that any MEPA review is required because the project does not require any state agency action and therefore will not trigger any MEPA review thresholds.

Hopkinton's Current Wastewater Discharge and Treatment Program

At this time, Hopkinton does not operate any facilities to treat any of the wastewater generated within the Town. Rather, pursuant to an intermunicipal agreement, the Town is permitted to send up to 400,000 gallons per day ("gpd") of wastewater to the Westborough-Shrewsbury Wastewater Treatment Plant in Westborough. Hopkinton currently discharges close to the 400,000-gpd contractual limit to Westborough on a regular basis, and Westborough does not have additional capacity to provide to Hopkinton.

In an effort to resolve some of its sewer capacity issues, Hopkinton has proposed and received permits from DEP for a wastewater treatment plant on Town owned property located off Fruit Street. The Fruit Street facility was the preferred option recommended in the Town's Comprehensive Wastewater Management Plan. However, the permits for the Fruit Street plant have been appealed and litigation is ongoing.

Need for Additional Capacity in South Street Area

The area in the portion of Town along South Street west of I-495 contains most of the Town's area zoned for industrial use. Currently, some of the industrial and commercial businesses located in the South Street area send their wastewater through the Town of Hopkinton sewer system for treatment by the Westborough plant. Some South Street

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businesses are still served by septic systems, waiting for Hopkinton to provide additional sewer capacity beyond its contractual limit with the Westborough plant. The Fruit Street plant was intended to provide relief to the businesses still on septic systems, as well as to other portions of Town in need of sewers.

One of the South Street businesses is Lonza Biologics, Inc. ("Lonza"). Lonza is a leading supplier of contract biopharmaceutical development and manufacturing services. Lonza operates a biologic laboratory and manufacturing facility, as well as offices, at 97-99 South Street. Lonza has recently opted to expand operations in Hopkinton and to relocate its Baltimore, Maryland contract process development and manufacturing operation to Hopkinton. The planned work force at the Hopkinton facility will be approximately 400 employees. To operate at full build-out, Lonza needs to be able to increase its discharges to the Hopkinton sewer system by approximately 75,000 additional gallons per day. The Town of Hopkinton wants to assist Lonza with its expansion plans, but this amount of needed sewage capacity was not anticipated during the planning of the Fruit Street Plant.

Connection to Milford Wastewater Treatment Plant

Chapter 172 of the Acts of 1996 provides:

The town of Hopkinton is hereby authorized to connect certain of its common sanitary sewers with the sewerage system of the town of Milford, and thereafter the town of Milford shall receive and dispose of the sewage entering its said system through such common sanitary sewers; provided, however, that an agreement to this effect shall be made between the two towns, acting through the board or officers having charge of sewers in the respective towns, Said agreement shall state the terms and conditions upon which the said connection is to be made, and shall be recorded by the town clerks in the records of their respective towns. Said agreement may provide for the payment by the town of Hopkinton to the town of Milford of a stated sum at the time the connection is made, and for a yearly rental beginning with the year in which the connection is made. Such rental may be based upon the number of entrances made to said common sanitary sewers. Said agreement shall also state the terms, conditions and regulations in accordance with which such entrances may be made within the town of Hopkinton.¹

¹ The Town reserves the right to argue that this provision supersedes any other state statute or regulation governing the proposed sewer connection from Hopkinton to Milford and that a Determination of Insignificance pursuant to the *Interbasin Transfer Act*, discussed below, or any other review, permit or approval is therefore not required.

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Hopkinton and Milford executed the Intermunicipal Agreement contemplated by this statute in February 2000. The Agreement permits up to 500,000 gpd of wastewater from Hopkinton to be sent to Milford's treatment plant. The sewer lines necessary to implement the Agreement were constructed along South Street in both Hopkinton and Milford to the respective Town lines, although they were not connected to one another. In addition, the required metering station to measure flows to Milford was never constructed.

Although the Intermunicipal Agreement permits Hopkinton to send up to 500,000 gpd of wastewater to Milford, the Town does not anticipate a need for so much capacity at this time. The maximum wastewater flow to be discharged from Hopkinton to Milford has yet to be determined, in part due to the *Interbasin Transfer Act* issues discussed below.

Both Hopkinton and Milford now seek to complete the sewer connection of the South Street area pursuant to their Intermunicipal Agreement. One issue that has arisen in connection with this effort concerns the necessary steps to be taken pursuant to the *Interbasin Transfer Act*. Hopkinton's water supply, including the water provided to the South Street area, comes from the SuAsCo (Sudbury/Assabet/Concord) River basin. The Westborough plant also discharges its wastewater to the SuAsCo River basin. Milford's wastewater treatment plant, however, discharges to the Charles River basin. Although Hopkinton is located in the SuAsCo, Blackstone and Charles River basins, it is the Town's understanding that sending wastewater that was originally drawn from the SuAsCo to be discharged into the Charles River basin could constitute an Interbasin Transfer since the water would cross a Town boundary.

Interbasin Transfer Act

The purpose of the *Interbasin Transfer Act*, M.G.L. c.21, §§8B-8D, is to ensure that any transfer of water or wastewater from one river basin to another is conducted in a manner that protects the water-dependant resources of the donor basin. Pursuant to the Act's implementing regulations—specifically, 313 CMR 4.04(2)-(4)—the Water Resources Commission may find that a proposed action is insignificant or, in other words, would not qualify as an interbasin transfer and would therefore not require a permit from the WRC.

As noted, the amount of wastewater proposed to be discharged in Milford is contractually limited to 500,000 gpd, clearly less than 1-million-gpd regulatory limit for a determination of insignificance. See 313 CMR 4.04(4)(a). The Town is currently working with the Water Resources Commission with respect to the technical issues associated with a determination of insignificance, but the Town is confident that it will be able to qualify for such a determination, at least with respect to its current wastewater needs.

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No Other State Agency Action Required and No State Funding

Based on the foregoing, the Town believes that the proposed connection and discharge of wastewater from Hopkinton to Milford will not require any state permits or state agency action. The Department of Environmental Protection (DEP) has stated that a sewer extension or connection permit is not required because the infrastructure has been constructed and the remaining length of pipe will not trigger the need for any new permits.

The Project does not involve any state funding or financing.

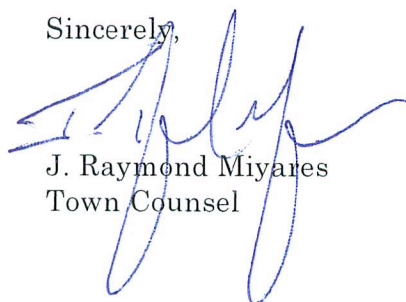
As there is no state agency action and no state funding, it is not necessary to address whether any MEPA thresholds are triggered.

Conclusion

For the reasons set forth above, the Town of Hopkinton respectfully requests that the MEPA Office issue an Advisory Opinion that MEPA review is not required for the project. Should anyone at EOEEA wish to discuss the issues raised in this letter, please do not hesitate to contact me.

Thank you for your courtesy and consideration with respect to this request.

Sincerely,



J. Raymond Miyares
Town Counsel

cc: Hopkinton Board of Public Works
Hopkinton Board of Selectmen
John Griffin, Esq.
Ruth H. Silman, Esq.