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January 16, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
NOTICE OF PROJECT CHANGE

PROJECT NAME : Dighton Comprehensive Wastewater  
Management Plan  
PROJECT MUNICIPALITY : Dighton  
PROJECT WATERSHED : Taunton River  
EEA NUMBER : 14238  
PROJECT PROPONENT : Town of Dighton  
DATE NOTICED IN MONITOR : December 10, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **continues to require** the preparation of an Environmental Impact Report as modified below. Pursuant to Section 11.09 of the MEPA Regulations, the special procedure for the review of the project established on June 13, 2008 remains in effect. In a separate Draft Record of Decision (DROD) also issued today, I propose to grant a request for a Phase I Waiver that will allow construction of Phase I of the project prior to completion of MEPA review for the entire project.

Project Description

In May 2008, the Proponent submitted an Environmental Notification Form (ENF) to the MEPA Office describing the project as involving a Comprehensive Wastewater Management Plan (CWMP) for the Town of Dighton. The purpose of the CWMP is to identify and evaluate areas of the Town that cannot effectively sustain conventional Title 5 waste disposal systems, to identify potential methods for dealing with identified wastewater disposal needs, and to provide an environmental analysis of the proposed plan. The CWMP will also examine growth planning issues, consistent with Executive Order #385.

Jursidiction

The project is undergoing review pursuant to Section 11.03 (5)(a)(3) and (5)(b)(3)(a) of

the MEPA regulations, because it will likely involve the construction of sewer mains ten or more miles in length and expand flows to a wastewater treatment facility in an amount greater than 10 percent of existing capacity, respectively. The project may also involve a new interbasin transfer of water of 1,000,000 or more gallons per day (gpd), thereby exceeding the MEPA threshold of Section 11.03(4)(a)(2) of the MEPA regulations. The project will likely require an Order of Conditions from the Dighton Conservation Commission; a 401 Water Quality Certification, Sewer Extension Permit, and a Chapter 91 License from the Department of Environmental Protection (MassDEP); and review under the Massachusetts Endangered Species Act (MESA) by the Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP). The project will likely also require a 404 Programmatic General Permit from the Army Corps of Engineers (ACOE), and a National Pollutant Discharge and Elimination System (NPDES) Permit from the US Environmental Protection Agency (EPA).

The project may be financed in full or in part by State Revolving Funds (SRF) issued by the Commonwealth. Because the project may include financial assistance from the Commonwealth, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

### Procedural History

#### *Special Review Procedure*

The ENF submittal in May 2008 contained a request from the Town that I establish a Special Review Procedure (SRP) for the review of this project under MEPA. The SRP was granted and will consist of the submission of four documents: ENF/Phase I-Needs Assessment and Growth Management Analysis; Phase II-Screening of Alternatives and Site Identification; Phase III-Draft CWMP/Environmental Impact Report (DEIR); and Phase IV-Final CWMP/Environmental Impact Report (FEIR).

#### *Phase I Waiver Request*

The ENF submittal in May 2008 also contained the Proponent's request for a Phase I Waiver to allow the first phase of the project to proceed, pending the preparation of the Comprehensive Wastewater Management Plan (CWMP)/Environmental Impact Report (EIR) for the entire project. A request for a Phase I Waiver was included within the ENF and was discussed at a public consultation meeting held on May 22, 2008. However, the necessary discussion and justification of the Phase I Waiver request was not included in the ENF and was not provided to the MEPA Office until the close of the comment period on June 6, 2008. Consequently, the Phase I Waiver request was not granted in conjunction with the ENF Certificate. In the ENF Certificate I directed the Town to request the Phase I Waiver by submitting a Notice of Project Change (NPC) with the required justification in accordance with the MEPA regulations at 301 CMR 11.11.

Notice of Project Change

As described in the NPC submittal, the project change involves a Phase I Waiver request to allow the first phase of the project to proceed along Center Street for the construction of sewer to serve Bristol County Agricultural High School, pending the preparation of the CWMP/EIR for the entire project. MassDEP has stated in its comment letter that the proposed project change is consistent with the Dighton Sewer Commission's Facilities Plan that the MassDEP approved when the original sewer system was constructed. MassDEP has also stated that the request for a Phase I Waiver could be granted without further permitting by MassDEP subject to the Town complying to a flow reduction offset as described in detail in MassDEP's comment letter on the NPC. As a condition of the DROD, I am also requiring that the Town minimize the potential impact of the additional flow on the receiving wastewater treatment facility (WWTF) in Taunton.

## SCOPE

The Phase II Screening of Alternatives and Site Identification document and the subsequent Draft EIR (DEIR) should be prepared in accordance with Section 11.07 of the MEPA regulations as modified by this Certificate. Both the Phase II Report and the DEIR should include a copy of this Certificate and should also contain copies of the comments received. The proponent should circulate the Phase II Report and the DEIR to those who commented on the ENF and the NPC, and to any other party required under the MEPA regulations.

Phase II ScopeAlternatives

As proposed in the ENF, the Phase II document - Screening of Alternatives and Site Identification, shall comply with the Phase II scope included in Section 3.0 of the ENF, as modified by this Certificate. As required under Executive Order 385, zoning constraints should be overlaid on maps to demonstrate that future growth has minimal impacts on water resources.

I expect the Phase II Report to identify and screen a wide range of alternatives, including shared systems and localized treatment and/or disposal. The Phase II Report should also address alternative methods of reducing impacts on water resources, including water conservation, Infiltration and Inflow (I/I) reduction, and stormwater recharge. The report should address the feasibility and effectiveness of such measures. It should, at a minimum, include a preliminary water demand management and conservation plan. The MEPA office has reviewed such plans in the recent past that could serve as examples, and I recommend consultation with MEPA staff on this matter. The Phase II Report should include detailed responses to the comments received for this project.

The alternatives to be considered should include the full range of options available under Title 5 (conventional and innovative/alternative systems, both for individual properties and for shared and communal facilities to serve multiple properties) and consideration should be given to

maintaining discharges in the sub-basins in which they are now occurring, where possible. An appropriate set of screening criteria should be developed and applied. These criteria should address the areas of cost (both to individuals and the community), technical feasibility, environmental and public health protection (including maintenance of water balance in the drainage sub-basins), institutional and management issues, solids handling and disposal, permitting, and other relevant concerns.

At the recommendation of MassDEP, the Phase II Report and the DEIR must fully comply with CWMP guidelines. When a Preferred Alternative is identified, localized impacts on wetland and other resource areas should be identified in detail, to ensure they are protected to the maximum extent feasible. If avoidance is not practicable, appropriate mitigation must be identified and provided. The Preferred Alternative plan must include the legal, institutional, management, and financial mechanisms for implementation, and there must be an analysis of costs to the average household, both sewered and non-sewered.

#### Interbasin Transfer Act and the Inter-municipal Agreements

The Interbasin Transfer Act governs the transfer of water and wastewater between river basins within the Commonwealth. The purpose of the Act is to ensure that if an interbasin transfer occurs, the resources of the donor basin are not adversely affected.

A wastewater transfer is a transfer of wastewater outside of a river basin for disposal. This transfer includes only that wastewater which is generated from a water supply source within the river basin from which the wastewater will be transferred and any inflow and infiltration generated within that basin. Wastewater transfers can include the out-of-basin sewerage of areas previously served by on-site and/or inbasin wastewater systems, or the sewerage of previously undeveloped areas.

The Town of Dighton has water supply sources in the Taunton River basin and the Narragansett Bay and Mt. Hope Bay basins. The Town should strive, through the CWMP, to treat and discharge as much of its wastewater as possible within its Town boundaries. Any wastewater disposal alternative that treats and discharges the Town's wastewater out of town may trigger the Interbasin Transfer Act (ITA). Dighton should contact the Water Resources Commission (WRC) to determine if a proposed alternative would invoke the ITA.

According to the ENF, a portion of the Town has an existing sewer connection to the City of Taunton. Dighton has an Inter-Municipal Agreement (IMA) with Taunton that allows the Town to discharge 610,000 gallons per day (gpd) to the Taunton wastewater treatment facility (WWTF). Total average flows have been well below this amount.

The Taunton WWTF presently treats flows from portions of the Towns of Raynham (0.6 mgd), Dighton (0.14 mgd), and Norton (0.017 mgd). The Town of Raynham is currently undergoing MEPA review (EEA #13507) for its own CWMP in which additional wastewater flows may be conveyed to the City of Taunton for treatment. The City of Taunton is also

presently implementing its own CWMP (EEA #13897) for the expansion of the existing Taunton WWTF to handle the additional wastewater flow and to implement an extensive Inflow and Infiltration (I/I) removal program to alleviate treatment capacity issues. The treated effluent from the Taunton WWTF is discharged to the Taunton River.

If expansion of the area sewered to Taunton is proposed as an alternative under the Alternatives Evaluation, the Phase II Report should provide the following information to help the Water Resources Commission to determine if the ITA would be invoked:

- Is the flow amount in the IMA an average or a maximum amount that can be transferred? If an average, what is the maximum amount of wastewater (in million gallons per day - mgd) that can be transferred?  
What are the pumping capacities of the sewer pump stations within Dighton? Will the capacities of these pumps need to be increased to accommodate additional flow?
- Which areas of Dighton did the 1978 Facilities Plan identify for sewerage to Taunton?
- In the past, the City Taunton has provided water to a portion of North Dighton (North Dighton Fire District). If this is still the case, what are the boundaries of the water supply system within the Fire District?

#### Growth Management

Executive Order #385 requires that state and local agencies engage in protective and coordinated planning oriented towards resource protection and sustainable economic development. For reasons of both environmental protection and fiscal prudence, investments in public infrastructure should be carefully targeted toward those areas for which clear existing needs have been established and for areas where denser development is appropriate, thereby relieving development pressures on open space, agricultural lands, and other valuable natural resources. The Phase II Report should identify the land uses located within the proposed Needs Areas and compare the potential secondary growth impacts that may be induced by public sewers with local and regional growth management policies. This secondary growth analysis should consider impacts to wetlands, historical resources, and rare species habitat. I encourage the proponent to consult with MassDEP and the Growth Management Policy staff at the Executive Office of Energy and Environmental Affairs in developing a growth management strategy.

#### DEIR Scope

#### Environmental Resource Areas

The DEIR should delineate on a plan of reasonable scale all environmental resources and resource areas located within those areas previously sewered and those proposed for sewerage (including those areas in adjacent towns with IMAs) under the new CWMP including: wetlands, drinking water supplies, fisheries, water bodies, Natural Heritage and Endangered Species Program (NHESP) priority or estimated habitats, parklands, recreational resources, historic resources, and agricultural lands. All resource area boundaries, riverfront areas, applicable buffer

zones, and 100-year flood elevations should also be included on this plan. The text should explain whether the local conservation commission has accepted the resource area boundaries, and any disputed boundary should be identified. Each wetland resource area and riverfront area should be characterized according to 310 CMR 10.00. The DEIR should provide an accurate measurement of the resource areas that will be affected by the project.

### Wetlands

The DEIR should contain an alternatives analysis to ensure that all wetland impacts are avoided, and where unavoidable impacts occur, impacts are minimized and mitigated. The DEIR should demonstrate that any impacts have been minimized, and that the project will be accomplished in a manner that is consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00).

The DEIR should address the significance of the wetland resources within the various Needs Areas, or any other wetland resource areas that may be impacted by the implementation of the CWMP. This discussion should include the significance of wetland resource areas for public and private water supply, flood control, storm damage prevention, fisheries, and wildlife habitat. It should identify the location of nearby public water supplies and wells.

The DEIR should demonstrate, through the use of modeling or a water budget analysis, the potential impacts of withdrawals on groundwater or wetland resource areas. The DEIR should discuss how new technologies or decentralized systems may impact the overall water budget and compare and contrast these impacts with those of the preferred central treatment system.

For any amount of required wetlands replication, a detailed wetlands replication plan should be provided in the DEIR that, at a minimum, includes: replication location(s) delineated on plans, elevations, typical cross sections, test pits or soil boring logs, groundwater elevations, the hydrology of areas to be altered and replicated, list of wetland plant species of areas to be altered and the proposed wetland replication species, planned construction sequence, and a discussion of the required performance standards and monitoring. MassDEP is recommending a replication rate of greater than 1:1.

### Projected Wastewater Flows and Sewer System Capacities

The DEIR should contain a detailed analysis of Dighton's existing wastewater flows, including the total combined sewage flow volumes from the previously constructed sewer service areas, and the proposed project's proposed sewer service area. The DEIR should include projections of these flows and volumes to the project design year and should analyze the Town's wastewater transmission and conveyance capacities for existing design year flows. The analysis should also identify the transmission and conveyance capacities from the Town of Dighton to the City of Taunton's WWTF.

The City of Taunton has exceeded its maximum flow rates under its National Pollutant Discharge and Elimination System (NPDES) permit due to excessive levels of Infiltration and Inflow (I/I), resulting in untreated discharges at the system combined sewer outfall (CSO) outlet. MassDEP is currently working with the City of Taunton to adopt and implement an I/I sewer bank that would be credited by removing documented I/I sources and then allowing new connections. I note that the Town of Dighton will be a co-permittee in the new NPDES permit for the City of Taunton upon its issuance. I advise the Town of Dighton to consult with the City of Taunton officials to coordinate acceptable I/I banking programs.

The DEIR should include a discussion of the status of the City of Taunton's NPDES Permit and what impacts the Town of Dighton's proposed sewer expansion plan and wastewater flows will have on the City of Taunton's NPDES Permit. The DEIR should describe the treatment capacity and design flows for the City of Taunton's WWTF, and should identify any/all formal inter-municipal agreements or memoranda of understanding and infrastructure capacity upgrades, proposed and/or currently underway, within the Town of Dighton, and the City of Taunton to support the transmission and treatment capacity analyses in the DEIR.

In addition, MassDEP has requested that the Town comply with a flow reduction offset. The DEIR must contain the analysis requested in MassDEP's comment letter on the NPC and it should also address how the Town will minimize the impact that the additional flow will have at the receiving wastewater treatment facility (WWTF) in Taunton.

#### Water Quality

The DEIR should evaluate whether additional wastewater flows to the Taunton River will exacerbate the existing non-attainment status of the River with the U.S. EPA's 303(d) list for nutrients, pathogens, and other pollutant loads. The DEIR should include mitigation provisions to avoid exacerbating non-attainment, and address methods to prevent additional areas from failing to attain their targeted water quality level. This analysis should consider the potential impact of water quality degradation on aquatic resources, downstream water withdrawals, and water quality.

The DEIR should address future nutrient loading requirements associated with phosphorus or nitrogen limits from wastewater discharges. The DEIR should also discuss current permit limits and the potential changes to nutrient loading limitations.

#### Stormwater

While the ENF addressed I/I removal measures, the DEIR should summarize these efforts and address the detailed comments on these issues, discuss gains in capacity to date, and future anticipated gains in capacity through effective I/I management. The DEIR should address how increases in volume capacity through I/I removal will affect implementation of the CWMP, ranking of priority areas, and the ability to accommodate interim wastewater flows while the CWMP process is ongoing.

The DEIR should provide a brief narrative describing potential erosion and sedimentation controls to be implemented to limit impacts of stormwater runoff from these project needs areas.

#### Rare Species

The DEIR should provide updated correspondence from NHESP outlining the types and protective status of rare species within the Town, the location of priority habitat areas or certified vernal pools, and the relationship of these areas to potential needs areas. The DEIR should include a site inventory to determine which needs areas might contain suitable habitat for the rare species known to exist within the sewer expansion project area. The DEIR should present the results of the habitat inventory on an appropriately scaled map.

The proponent should coordinate with NHESP upon advancement of design and impact areas to determine potential exemptions under MESA, or future filings required in accordance with MESA or the Wetlands Protection Act.

#### Historical/Archaeological Resources

According to comments received by the Massachusetts Historical Commission (MHC), the project area contains numerous significant historic and/or archaeological resources. The DEIR should include information detailing the relationship of the identified historical or archaeological resources to the proposed needs areas. This should be provided in a narrative and/or graphical format. The MHC has requested additional information in order to determine what impacts, if any, the proposed project may have on any significant historic and archaeological resources. The DEIR should provide information about any proposed above-ground facilities, including scaled project plans and elevation drawings showing existing and proposed conditions for the project.

#### Construction Period

The DEIR should evaluate construction period impacts, including impacts from earth moving, impacts to vegetation, potential impacts from erosion and sedimentation, traffic impacts on adjacent roadways, and impacts to adjacent land uses.

#### Mitigation/Section 61

The DEIR should include a separate chapter summarizing proposed mitigation measures. This chapter should also include draft Section 61 Findings for each state agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and a schedule for implementation.



Response to Comments

In order to ensure that the issues raised by commenters are addressed, the Phase II document and the DEIR should include a response to comments to the extent they are within MEPA jurisdiction. This directive is not intended to, and shall not be construed to, enlarge the scope of the Phase II document and the DEIR beyond what has been expressly identified in this certificate. The DEIR should also include a copy of this Certificate and a copy of each comment letter received on the ENF and the NPC.

Distribution


Both the Phase II Report and the DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to the Town of Dighton. A copy of both the Phase II Report and the DEIR should be made available for public review at the Town of Dighton Public Library.

Conclusion

I have reviewed the proponent's NPC and request for a Phase I Waiver and I hereby find that the NPC meets the standards for adequacy in the MEPA regulations. The proponent should prepare a Phase II report and the DEIR in accordance with the scope provided above. In the DROD also issued today, I propose that the Phase I Waiver requested in the NPC be granted to allow a portion of the project described in the NPC to proceed prior to completion of the EIR for the entire project. The DROD will be published in the January 21, 2009 issue of the *Environmental Monitor* and subject to a 14-day public comment period.

January 16, 2009

Date



Ian A. Bowles

## Comments received:

12/18/2008 Massachusetts Historical Commission (MHC)  
01/07/2009 Division of Marine Fisheries  
01/08/2009 Office of Coastal Zone Management  
01/09/2009 Department of Environmental Protection – SERO

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