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January 16, 2009

DRAFT RECORD OF DECISION

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 (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and hereby **propose to grant** a waiver that will allow the proponent to proceed with design and permitting of Phase 1 of the project prior to completing the Environmental Impact Report (EIR) process 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.

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 this DROD I am requiring that the Town minimize the potential impact of the additional flow on the receiving wastewater treatment facility (WWTF) in Taunton.

MEPA Jurisdiction and Required Permits

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.

Summary of Potential Environmental Impacts

MassDEP has stated in its comment letter on the NPC that the City of Taunton, who will be receiving the Dighton wastewater, is presently under a Consent Order from MassDEP and an

US Environmental Protection Agency Administrative Order to address the excessive infiltration and inflow conditions resulting in the activation of a combined sewer overflow outlet (CSO) into the Taunton River. The goal of these orders is the complete elimination of the CSO outlet into the Taunton River. Neither the Department nor EPA has issued a sewer moratorium for new connections to the sewer system tributary to the Taunton WWTF. MassDEP is working with all new connectors to the sewer system, such as Dighton, to have them adopt a sewer banking program and to reduce flows where possible. A sewer banking program requires that prior to making a new sewer connection an amount of flow equal to five times what is being proposed to be added is removed through infiltration and inflow removal.

Summary of Proposed Mitigation

Phase 1 of the proposed project is consistent with the Dighton Sewer Commission's Facilities Plan that MassDEP approved when the original sewer system was constructed. Measures to avoid, minimize and mitigate project impacts of the overall project were described in the original ENF.

Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR for the entire project. Consistent with this request, an Notice of Project Change (NPC) was submitted and it was subject to an extended review period. The NPC identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. They include a discussion of the project's consistency with the criteria for granting a Phase 1 Waiver, design plans for the proposed sewer extension, identification of environmental impacts associated with Phase 1 and identification of measures to avoid, minimize and mitigate impacts associated with Phase 1.

Criteria for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; **and**
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

I find that subject to conditions described below, the proponent has met the tests for a Phase 1 Waiver. My determination is based on the information submitted by the Proponent, consultation with the relevant state agencies, and consideration of comment letters received. As further outlined below, I have determined that issuance of the Phase 1 Waiver would not serve to minimize Damage to the Environment, that adequate and unconstrained infrastructure exists to support the project, that the project is severable, and that agency actions on Phase 1 can be conditioned to ensure compliance with MEPA.

The request for the waiver is supported by MassDEP. Comments from other state resource agencies do not identify objections to the granting of the Phase 1 Waiver or request additional analysis of environmental impacts associated with the Phase 1 Waiver request.

Requiring the preparation of an EIR in advance of undertaking Phase 1 would cause undue hardship and would not serve to minimize Damage to the Environment:

The proponent has requested 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 rather than continue to repair onsite septic systems. In addition, there is a Town and state planned replacement of the Berkley-Dighton Bridge which would provide an optimal time to proceed with the work of connecting to the Dighton sewer system on Somerset Avenue, Route 138. If the school waits, the opportunity to coordinate efforts with the state and town work planned for Center Street will be lost. Due to the age of the school's subsurface systems and the impending construction along Center Street, the proponent would face undue hardship if the design and construction did not proceed at this time.

State agency actions associated with Phase 1 are limited to the granting of a Sewer Extension Permit from MassDEP. The Proponent has provided an analysis of environmental impacts associated within the NPC and proposed adequate mitigation to avoid, minimize and mitigate impacts. Comments from the MassDEP indicate support for the Phase 1 Waiver. The comment letter indicates that additional analysis of impacts is not necessary prior to permitting. The NPC contains sufficient information to enable MassDEP to understand the environmental consequences of its permit decisions.

The granting of a Phase 1 Waiver is being conditioned to ensure the environmental impacts of the project are minimized while providing public benefits. These conditions include:

- The proponent must prepare draft Section 61 Findings for the MassDEP's Sewer Extension Permit outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting.
- The proponent must minimize the impact that the additional flow will have at the receiving wastewater treatment facility (WWTF) in Taunton.
- The proponent must comply with a flow reduction offset equivalent to what is in the Taunton sewer ordinance, as requested by MassDEP
- The proponent should adopt a sewer banking program to achieve a five-for-one flow reduction offset as required by the Taunton ordinance discussed in MassDEP's comment letter.

Given the foregoing, and subject to the conditions described above, I find that a requirement to complete MEPA review prior to initiating the permit process for Phase 1 is not necessary in order for the proponent to demonstrate that it will avoid, minimize, and mitigate potential Damage to the Environment to the maximum extent practicable, and that a requirement to do so would therefore cause undue hardship and would not serve to minimize Damage to the Environment.

1. The potential environmental impacts of Phase 1, taken alone, are insignificant.

The project will be designed to avoid, minimize and mitigate environmental impacts. Based on the foregoing, I find that the potential environmental impacts of Phase 1, taken alone, are insignificant.

2. Ample and unconstrained infrastructure facilities and services exist to support Phase 1.

The Town and state planned replacement of the Berkley-Dighton Bridge which will provide an optimal time to proceed with the work of connecting to the Dighton sewer system on Somerset Avenue, Route 138. If the school waits, the opportunity to coordinate efforts with the state and town work planned for Center Street will be lost.

Based on the foregoing, I find that ample and unconstrained infrastructure exists to support Phase 1.

3. The project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.

Phase 1 is not dependent upon completion of the overall project. It will be limited to providing the Bristol County Agricultural School with a sewer system rather than have the school continue to repair onsite septic systems. Phase 1 has been identified by the Town and as a priority for the Town and a significant benefit of the project.

Based on the foregoing, I find that Phase 1 of the project is severable and does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.

- 4. **The agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.**

The project requires a Sewer Extension Permit from the Department of Environmental Protection (MassDEP) for Phase 1 of the project. This permit can be conditioned to ensure that the full-build of the project complies with MEPA and its implementing regulations. In addition, the proponent must prepare draft Section 61 Findings for the Sewer Extension Permit outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting.

Based on the foregoing, I find that the agency actions on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Conclusion

I have determined that this waiver request has merit, and am issuing this DROD, which will be published in the next edition of the Environmental Monitor on January 21, 2009 in accordance with 301 CMR 11.15(2). That publication begins the public comment period. The public comment period lasts for 14 days and will end on February 4, 2009. During this period, the proponent should confirm that it accepts the conditions of the Phase 1 Waiver. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

I hereby **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with design and permitting of Phase 1 of the project as identified in the NPC prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions.

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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