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July 25, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Assabet River Consortium – Comprehensive Wastewater Management Plan
PROJECT MUNICIPALITY : Town of Hudson/and five other Municipalities.
PROJECT WATERSHED : Concord Basin – Assabet River
EOEA NUMBER : 12348
PROJECT PROPONENT : Town of Hudson
DATE NOTICED IN MONITOR : May 23, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) 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 Town of Hudson to proceed with its Phase A construction activities (hereinafter referred to as Phase I of the project prior to the submission of the Phase III Report/FEIR for the Assabet River Consortium Comprehensive Wastewater Management Plan (CWMP).

Town of Hudson– NPC/Phase I Waiver Request

The Town of Hudson has filed this Notice of Project Change (NPC)/Phase I Waiver Request with the MEPA Office to proceed with Phase I of the proposed construction of planned upgrades to the Hudson Wastewater Treatment Facility (Hudson WWTF) to address the immediate requirements of the Town's new 2005 National Pollutant Discharge Elimination System (NPDES) Permit prior to the completion of the MEPA Review process for the Assabet River Consortium CWMP. To help finance the project, the Town will be requesting a State Revolving Fund (SRF) Loan from the Massachusetts Water Pollution Abatement Trust. My approval of this Phase I Waiver request will enable the Town to apply for SRF funding, complete the proposed construction activities, and meet the NPDES Permit compliance deadlines for phosphorous removal.

As described in the Phase III Report/DEIR and this NPC, the Town of Hudson and the other five Consortium communities have committed to design, construct and operate wastewater treatment improvements necessary to attain 0.1 mg/l total effluent phosphorous levels. The proposed wastewater treatment improvements will also be designed to accommodate the need for future additional phosphorous removal treatment technologies that may be required to achieve water quality standards for the Assabet River. The Town of Hudson has completed the final design for the upgrade of its WWTF and is prepared to initiate the financing and construction bid process for Phase I construction activities. The Town's proposed Phase I construction activities including; needed repairs and upgrades to the Hudson WWTF using the AquaDAF (Infilco Degremont) phosphorous removal technology; upgrades to the existing disinfection facilities; sludge storage and other upgrades. The Town's proposed Phase B construction activities, hereinafter referred to as Phase II construction activities, will be constructed during the 2012-2018 period and may include extensions of existing sewer, equipment upgrades and replacement, construction of a new groundwater discharge site, and if required in future NPDES permits, additional tertiary effluent pumping and filtration improvements.

Assabet River Consortium CWMP - Overview

The Town of Hudson along with the Towns of Maynard, Northborough, Shrewsbury, and Westborough and the City of Marlborough have joined to form the Assabet River Consortium to prepare a Comprehensive Wastewater Management Plan/Environmental Impact Report (CWMP/EIR) to address short-term and long-term regional issues relating to the wastewater treatment and disposal and nutrient loading in the Assabet River on a basin-wide basis. The goal of the CWMP/EIR is to identify environmentally sustainable treatment alternatives that respond to the communities' needs, meet water quality and public health standards, reduce phosphorous loading, and increase water levels in the river and its tributaries. The result will be a set of comprehensive plans outlining how the communities, individually and collectively, will treat and dispose of sanitary sewage for the next 20 years.

Currently, the Assabet River does not meet water quality standards due to eutrophication, largely caused by phosphorus from municipal wastewater treatment facilities (WWTFs). Five of the six communities (excluding Northborough) are largely built out, with between 85 percent and 100 percent of the population within existing sewer areas. The six Consortium towns discharge wastewater into the Assabet River via four existing wastewater treatment facilities (WWTFs), located in Westborough (also serving Shrewsbury), Marlborough (also serving Northborough), Hudson, and Maynard. Significantly reducing phosphorous from the four WWTFs will represent a critically important component of a multi-faceted watershed-based approach to cleaning up the Assabet River.

Based on the analysis to date, it is clear that wastewater management and the restoration of the Assabet River will also require significant reductions in phosphorous contributions from existing sediments (through dredging, dam removal, and/or sediment treatment), and from non-point sources. In addition, a successful watershed-based wastewater management program for the Assabet River must restore water balancing through groundwater discharge and stormwater recharge to stressed sub-basins. The final element of a successful plan will be a comprehensive long-term monitoring program, to evaluate progress as project elements are implemented.

A Special Review Procedure (SRP) was established to facilitate the development of environmentally sound wastewater management practices within the member communities and in the Assabet Basin as a whole. The SRP provided for the filing of four documents: Phase I, for which I issued a Certificate in June 2001, included a definition of existing conditions and an analysis of wastewater management needs; Phase II, for which I issued a Certificate in August 15, 2002, included the development and screening of wastewater management alternatives to address the needs defined in the Phase I document. The Phase III Report/DEIR was recently submitted and reviewed by the MEPA Office and included a detailed description of the Consortium's Draft Recommended Plan. The Consortium communities, together with MassDEP and the US Environmental Protection Agency (EPA), proposed a phased (Phase I, Phase II) 10-year adaptive management approach for the implementation of the Consortium's proposed Assabet River CWMP. The Consortium identified a number of project elements, listed below, that would be addressed under a phased approach and through the NPDES 5-year permit review process, or through alternative mechanisms and time frames outside of the CWMP/EIR process.

The Secretary's Certificate on the Phase III Report/DEIR (July 25, 2007) found the Phase III/DEIR document to be adequate, and requested that the Assabet Consortium members continue to work with MassDEP, EPA and other Assabet River stakeholders to address the issues identified in the Secretary's Certificate particularly as they may pertain to the City of Marlborough's proposed increased wastewater flows to the Assabet River. The Secretary's Certificate also required that the Phase III/FEIR Report include a summary description of each Consortium community's I/I Program plan, Water Conservation Program plan, and Stormwater Management Program plan, with proposed schedules for their implementation, and a proposed schedule for the submittal of the results of MassDEP's Sediment Study and the In-Stream Monitoring Program, along with a proposed Assabet River CWMP - Phase II Program plan.

Waiver Request

The proponent has requested a waiver that will allow the Town to proceed with Phase I of the project prior to the Consortium's submission of the Phase III Report/FEIR for the entire CWMP project. An NPC was submitted in conjunction with this request that identifies the environmental impacts of the project change and describes measures to be undertaken by the Town to avoid, minimize and mitigate project impacts.

Standards for All Waivers

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.

Determinations for a Phase I Waiver

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 I, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- (c) the project is severable, such that Phase I 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 I 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

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR prior to completion of Phase I of the project would result in an undue hardship for the Proponent and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(4), the latter finding is based on my determination that:

- a. the potential environmental impacts of Phase I do not exceed any EIR thresholds, and taken alone, are insignificant;

- b. while Phase I anticipates the subsequent construction of the Town's Phase II sewers, Phase I does not restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated;
- c. MassDEP's review of the Town of Hudson's Phase I sewer work 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 note that the Town of Hudson has completed the final design for the upgrade of their WWTF and is prepared to initiate the financing and construction bid process for Phase I construction activities including needed repairs and upgrades to the main WWTF, the addition of a new tertiary treatment process for phosphorous removal, upgrades to the existing disinfection facilities, sludge storage and other upgrades. The Phase III Report/FEIR will need to address the issues identified in the Certificate on the Phase III Report/DEIR, as modified by the NPC Certificate issued for this project on July 25, 2007, and the comments received on the Phase III Report/DEIR and the NPC, so that they can be considered in the evaluation of the most feasible options and a presentation of the Final Recommended Plan for the Assabet River Consortium CWMP.

I have determined that this waiver request has merit, and hereby propose to grant the waiver, which will allow the Town of Hudson to proceed with Phase 1 (Phase A construction activities) of the project prior to the submission of the Phase III Report/FEIR for the entire Assabet River Consortium CWMP project, subject to the above findings. I am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on August 8, 2007 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on August 22, 2007. 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).

July 25, 2007

Date

Ian A. Bowles, Secretary

Comments received: (continued on next page)

06/11/07 Stephen H. Kaiser

06/13/07 Organization for the Assabet River (OAR)

Comments received: (continued)

06/13/07 Gregory L. Opp
06/19/07 Town of Hudson, Department of Public Works

EEA #12348 DROD Town of Hudson, Assabet River Consortium CWMP

IAB/NCZ/ncz