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August 8, 2005

DRAFT RECORD OF DECISION PHASE I WAIVER

PROJECT NAME : Comprehensive Wastewater Management
Plan
PROJECT MUNICIPALITY : North Attleborough
PROJECT WATERSHED : Ten Mile
EOEA NUMBER : 11869
PROJECT PROPONENT : North Attleborough Board of Public Works
DATE NOTICED IN MONITOR : July 9, 2005

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to **grant** a Phase I Waiver to allow the first phase of the project to proceed, pending the preparation of a Draft Environmental Impact Report (DEIR) for the project. In a separate certificate, dated August 8, 2005 I issued a scope for the DEIR.

Project Description:

In 1984, the Town of North Attleborough prepared a wastewater facilities master plan for the installation of town-wide sanitary sewers and a wastewater treatment facility (WWTF). The Town submitted an Environmental Notification Form (ENF) to the MEPA Office in February 1999 to develop a Comprehensive Wastewater Management Plan (CWMP) to establish a long-term sewerage program for the unsewered areas Town of North Attleborough. The Town's CWMP involved the upgrading and expanding the municipal wastewater collection system to accommodate areas in need of sewer service identified as Needs Areas A and B. The Town's sewer upgrading and expansion project includes the installation of approximately 26.5 miles of sewer and a number of sewer pump stations.

The project is undergoing review pursuant to Section 11.03 (5)(a)(3) and (5)(b)(3)(a) of the MEPA regulations, because the project involves construction of sewer mains ten or more miles in length (approximately 26.5 miles total) and the expansion in the flow to a wastewater treatment facility by 10% of existing capacity, respectively. The project will require an Order of Conditions from the North Attleborough Conservation Commission; a Construction Permit from the Massachusetts Highway Department (MHD), and a 401 Water Quality Certification and Sewer Extension Permit from the Department of Environmental Protection (DEP). Because the proponent is seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to all aspects of the project that may cause significant Damage to the Environment.

Phase I Waiver Request

The proponent is requesting a Phase I Waiver to extend municipal sewers to existing residential homes located along Oakridge Avenue and adjacent to Greenwood Lake in the northeast section of North Attleborough, prior to completion of the overall environmental review for the comprehensive wastewater management planning process. According to the information provided in the previously submitted (February 1999) ENF for this project, the proposed Oakridge Avenue Sewer Expansion area was originally identified as a High Priority ("Group A") sewer needs area in the Town of North Attleborough.

The Oakridge Avenue sewer expansion project will include the installation of approximately 9,190 lf of new low pressure sewer main, and 1 new pumping stations, from the Mansfield Town line, south along Oakridge Avenue to an existing gravity sewer line that flows to North Attleborough's East Side Interceptor on Bungay Road. Nearly all of the proposed the Oakridge Avenue Sewer Expansion sewers will be located within the rights-of-way of existing public roadways. Approximately 2,380 lf of new sewer main will be located outside of existing public roadway rights-of-way, including the crossing (1,380 lf) of the U.S. National Fish Hatchery property.

The Oakridge Avenue project has been designed to serve the wastewater flows (approximately 19,000 gpd) from approximately 92 existing single-family residences, many with failing on-site septic systems, located along Oakridge Avenue in North Attleborough. According to the proponent, the proposed Oakridge Avenue sewer expansion project will be designed to accommodate the potential future wastewater flows from a small number of existing homes with problematic or failing on-site septic systems located next to Greenwood Lake in the Town of Mansfield. The wastewater flows from Oakridge Avenue Sewer Expansion Project, together with North Attleborough's existing wastewater flows from previously constructed municipal sewers (3.5 MGD), will be conveyed to North Attleborough's Wastewater Treatment Facility (WWTF) for treatment and discharge.

According to the information contained in the NPC, the Town's existing sewer collection and treatment system has the capacity to accommodate the additional wastewater flows anticipated from the Oakridge Avenue sewer expansion project. The addition of the Oakridge Avenue sewer expansion project's wastewater flows will not exceed the North Attleborough WWTF permitted treatment capacity of (4.61 MGD) under the current National Pollution and Discharge Elimination System (NPDES) Permit for the Town of North Attleborough's WWTF.

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds 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.

In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
3. the project is severable, such that phase one 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
4. the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, 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 have carefully reviewed the NPC and supporting documentation, written comments and comments received at the scoping session.

1. As described in the NPC/Phase I Waiver Request, the Oakridge Avenue sewer expansion project will impact a relatively small amount (approximately 1,600 sf) of bordering vegetated wetlands (BVW), and 2,100 of land under water wetlands resource area.

The proposed Oakridge Avenue project will also impact approximately 1,150 sf of floodplain and 14,000 sf of Riverfront Area. According to the proponent, the project has been designed to meet DEP's Stormwater Management Policy standards and practices. The proponent will need to employ appropriate erosion and sedimentation control measures during project construction.

According to the comments received from Massachusetts Historical Commission (MHC), the Oakridge Avenue sewer expansion project area contains numerous archeologically significant sites associated with the Native American occupation of the region. In their April 1999 comments on the ENF, MHC had requested that the proponent complete an intensive (locational) archeological survey of four specific project locations within the CWMP project area including the Lake Como area. According to MHC, the proponent has not responded to MHC's request for additional information. As a condition my approval of the proponent's Phase I Waiver request, I am requiring the proponent to respond to MHC's request for additional information. Specifically, the proponent must consult with MHC and complete an intensive locational archaeological survey for each of the four locations identified by MHC prior to initiating any new sewer construction activities.

2. The wastewater flows from the Oakridge Avenue sewer expansion project will be serviced by the Town of North Attleborough's Wastewater Treatment Facility (WWTF). According to the proponent, the Town of North Attleborough's sewer collection and treatment systems have the capacity to accommodate the additional wastewater flows anticipated from the Oakridge Avenue sewer expansion project.
3. In their comments, DEP has indicated its support for the proponent's Phase I Waiver request, and would agree to issue the proponent a permit for the construction of the Oakridge Avenue sewer expansion project subject to the following conditions and requirements;
 - the Town of North Attleborough agrees to seek funding in fiscal year 2007 to complete the preparation of its CWMP/EIR, in accordance with the original Scope contained in the Secretary's Certificate on the ENF (April 1999), and any additional modifications and revisions to the Scope recommended by DEP as part of this NPC Phase/I Waiver Request review process.
 - the Town of North Attleborough commits to work closely with DEP and the MEPA Office to prepare a schedule for the completion and submittal to the MEPA Office of the Town's Draft and Final CWMP (CWMP/DEIR, CWMP/FEIR),

- the Town of North Attleborough agrees to not submit any additional Phase I Waiver Requests to the MEPA Office prior to North Attleborough's completion of the CWMP, and the Secretary's issuance of a MEPA Certificate for the Town of North Attleborough's CWMP/FEIR,
- only existing homes located within the Oakridge Avenue project area will be allowed sewer connection permits prior to the completion of the Town of North Attleborough's CWMP, and the Secretary's issuance of a MEPA Certificate for the Town of North Attleborough's CWMP/FEIR,
- the Town of North Attleborough will not issue sewer extension permits for existing developments located within previously sewered areas, and any new development proposing to be connected to the Oakridge Avenue sewers prior to North Attleborough's completion of the CWMP, and the Secretary's issuance of a MEPA Certificate for the Town of North Attleborough's CWMP/FEIR, and
- the Town of North Attleborough will develop and implement an approved infiltration and inflow (I&I) removal program. North Attleborough's I&I program must achieve DEP standards for I&I offsets for the Oakridge Avenue wastewater flows.

I adopt DEP's comments, and proposed conditions and requirements, as my own, and condition my approval of the proponent's Phase I Waiver request accordingly.

3. As a further condition of my granting the Phase I Waiver, I am requiring the proponent to: 1) prepare in a separate chapter of the DEIR a detailed discussion of the history of sewer construction in the Town of North Attleborough. This section of the DEIR should include a description of any/all previously completed sewer construction activities and their respective environmental impacts, as well as for the future build-out of the Town of North Attleborough's town-wide sewer construction program; and 2) prepare and submit to the MEPA Office the Scope of Work for the Town of North Attleborough's Draft and Final CWMP (CWMP/DEIR, CWMP/FEIR). The Scope of Work should include a proposed schedule for the completion and submittal to the MEPA Office of the Town's Draft and Final CWMP (CWMP/DEIR, CWMP/FEIR).

The project will require a Sewer Extension Permit from the Department of Environmental Protection (DEP). I anticipate that DEP's permit review process will contain terms such as a condition or restriction so as to ensure due compliance with MEPA and 301 CMR 11.00.

Based on these findings, it is my judgment that the phase one waiver request does have merit, does meet the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the Phase I Waiver subject to the aforementioned findings and conditions.

This Draft Record of Decision (DROD) shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

August 8, 2005

Date

Stephen R. Pritchard, Secretary

Comments received:

07/29/05 MA Department of Environmental Protection – SERO
08/03/05 Massachusetts Historical Commission (MHC)

DROD #11869
SRP/NCZ/ncz