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February 21, 2003

DRAFT RECORD OF DECISION PHASE I WAIVER

PROJECT NAME : Tewksbury Sewer Expansion Project
PROJECT MUNICIPALITY : Tewksbury
PROJECT WATERSHED : Merrimac, Ipswich, Concord
EOEA NUMBER : 12955
PROJECT PROPONENT : Town of Tewksbury
DATE NOTICED IN MONITOR : January 22, 2003

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 an Environmental Impact Report (EIR) for the project. In a separate certificate, dated February 21, 2003 I issued a scope for the EIR.

Project Description

As described in the Environmental Notification Form (ENF), the proposed phased expansion (Phase 6 – Phase 11) of the Town of Tewksbury's existing wastewater collection system will involve the installation of approximately 95 miles of new sewers and force mains and 20 new pumping stations. The new sewers will connect to Tewksbury's existing wastewater collection system in numerous locations throughout the Town of Tewksbury and within each phase of the proposed project.

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 95 miles total) and the construction of one or more New sewer mains that will result in the expansion in the flow to a wastewater treatment facility by 10% (28% total) of existing capacity, respectively.

The project will require an Order of Conditions from the Tewksbury Conservation Commission; a Construction Permit from the Massachusetts Highway Department (MHD); a 401 Water Quality Certification and Sewer Extension Permit from the Department of Environmental Protection (DEP).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over land alteration, wetlands, drainage, and wastewater issues.

Phase I Waiver Request

The proponent has requested a Phase I Waiver to construct a portion of the proposed sewer project, described in the ENF as Phase 6, and involving the construction of approximately 5.0 miles of new sewer main and a pump station to service an area fully developed with single family homes, prior to completion of the overall environmental review for the wastewater management planning process. The Phase I Waiver Request was presented within the ENF and supporting documents and was discussed at a public consultation meeting held on February 4, 2003.

As described in the ENF, a small portion (approximately 2,800 linear feet) of the new sewer mains in Phase 6 will be located outside of existing public roadways in areas characterized as existing parking lots, maintained yards and gravel driveways. Phase 6 will generate a wastewater flow of approximately 100,000 gallons per day (gpd). The proponent has generally designed the project to minimize environmental impacts. The impacts of Phase 6 are below any stand-alone MEPA thresholds.

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 ENF and supporting documentation, written comments and comments received at the scoping session.

1. As described in the ENF/Phase I Waiver Request, the Phase 6 portion of the proposed project will not impact wetlands resources areas, nor is any work proposed within the 100-foot buffer zone of bordering vegetated wetlands (BVW). According to the proponent, the project has been designed to meet DEP's Stormwater Management Policy standards and practices. The proponent has also agreed to employ appropriate erosion and sedimentation control measures during project construction. The proponent has completed an archeological reconnaissance survey for Phase 6 of the proposed project. In their comments, MHC has indicated that no further archaeological investigation is warranted for the Phase 6 portion of the proposed sewer project. I therefore find that the potential environmental impacts of the project are insignificant.
2. As described in the ENF, the project's wastewater treatment needs will be serviced by the City of Lowell's Duck Island Wastewater Treatment Facility (Duck Island WWTF). According to the proponent, the Town's sewer collection system has the capacity to accommodate the additional wastewater flows anticipated from the proposed sewer expansion project, including Phase 6. The Phase 6 wastewater flows will not exceed Tewksbury's wastewater treatment allowance (4.25 mgd) at the Duck Island WWTF, or the total amount of wastewater that can be discharged from the Duck Island WWTF directly to the Merrimack River under the Lowell facility's current National Pollution and Discharge Elimination System (NPDES) Permit. I therefore find that ample and unconstrained infrastructure facilities and services exist to support the project.

3. As a condition of my granting the Phase I Waiver, I am requiring the proponent to prepare in a separate chapter of the EIR a detailed discussion of the history of sewer construction in the Town of Tewksbury. This section of the EIR should include a description of the construction activities and environmental impacts associated with each of the previous six MEPA submittals, as well as for the completed town-wide sewer construction program contemplated by the Town of Tewksbury.
4. The project will require a 401 Water Quality Certification and Sewer Extension Permit from the Department of Environmental Protection (DEP). DEP's permit review 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.

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 one waiver subject to the aforementioned findings and conditions. This Draft Record of Decision (DROD) shall be published in the March 8, 2003 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

February 21, 2003
Date

Ellen Roy Herzfelder, Secretary

Comments received:

01/07/03	Massachusetts Historical Commission (MHC)
01/14/03	Camp, Dresser & McKee Inc. (CDM)
02/07/03	CDM
02/11/03	Massachusetts Highway Department (MHD)
02/11/03	MA Department of Environmental Protection – NERO
02/11/03	Northern Middlesex Council of Governments (NMCOG)
02/12/03	MHC
02/17/03	Jane Wheeler, CDM

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