



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

February 8, 2016

Board of Sewer Commissioners
P.O. Box 575
Gilbertville, MA 01031

Re: Hardwick -WWM
Wheelwright and Gilbertville WPCF
Permit Exceedances & Staffing
Projects #124-001 & 134-002
ACOP-WE-15-1N002

Dear Mr. Colson:

Enclosed please find two copies of a draft Administrative Consent Order with Penalty, ACOP-WE-15-1N002, for your review and comment. Please review the ACOP for acceptance of the document and the landmark dates and return the documents to the Western Regional Office by close of business February 29, 2015.

The ACOP attempts to integrate issues discussed between your representative and Department representatives during the July 23, 2015 Enforcement Conference regarding violations at the Wheelwright Water Pollution Control Facility (WPCF).

If the conditions in the ACOP are acceptable, please have both copies signed and dated and returned to the Department. The Department will then sign and date both copies, and return an original for your records. If there are questions regarding this matter, please contact the undersigned at 413-755-2284.

Sincerely,

Paul J. Nietupski
Section Chief, Wastewater Management
Bureau of Water Resources

Enclosure: ACOP-WE-15-1N002

cc: Christine LeBel, MassDEP OGC

wpcdoc/enf/Hardwick Wheelwright ACOP draft cvr ltr

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)
Town of Hardwick)
307 Main Street, P.O. Box 575)
Gilbertville, MA 01031)

File No.: ACOP-WE-15-1N002
Program ID #: 124-002

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts, 02108, and its Western Regional Office at 436 Dwight Street, Springfield, Massachusetts, 01103.
2. The Town of Hardwick ("Respondent") is a Municipality with its principal offices located at 307 Main Street, Gilbertville, Massachusetts, 01031. Respondent's mailing address for purposes of this Consent Order is P.O. Box 575, Gilbertville, Massachusetts, 01031.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21, §§ 26-53, the Surface Water Discharge Permit Regulations at 314 CMR 3.00; the Ground Water Discharge Permit Regulations at 314 CMR 5.00; the Sewer System Extension and Connection Permit Regulations at 314 CMR 7.00; the Supplemental Requirements for Hazardous Waste Management Facilities at 314 CMR 8.00; the Water Quality Certification Regulations at 314 CMR 9.00; the Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Discharges at 314 CMR 12.00; and the requirements for Certification of Operators of Wastewater Treatment Facilities at 257 CMR 2.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent maintains a National Pollutant Discharge Elimination System (NPDES) Permit (MA0102431) for its Village of Wheelwright Water Pollution Control Facility (Wheelwright WPCF) located on Pine Street in the Wheelwright village of Hardwick. Respondent's Permit, issued jointly by the Department and the United States Department of Environmental Protection ("USEPA"), establishes that the Permittee may discharge effluent from outfall serial number 001 to the Ware River.
5. Respondent also operates a second wastewater treatment plant and maintains a National Pollutant Discharge Elimination System (NPDES) Permit (MA0100102) for its Village of Gilbertville Water Pollution Control Facility (Gilbertville WPCF) located on Old Mill Road in the Gilbertville village of Hardwick. Respondent's Permit, issued jointly by the Department and the United States Department of Environmental Protection ("USEPA"), establishes that the Permittee may discharge effluent from outfall serial number 001 to the Ware River.
6. The following facts and allegations have led MassDEP to issue this Consent Order:

Permit Limits:

- A. During calendar year 2014, the Wheelwright WPCF exceeded its NPDES Permit limits for the following: the monthly average Biochemical Oxygen Demand ("BOD") limit of 30 milligrams per liter (mg/l) for 11 of the 12 months; the monthly average limit Total Suspended Solids ("TSS") limit of 30 mg/l for 8 of the 12 months; and the Total Phosphorus ("TP") limit of 1.0 mg/l for 12 of the 12 months. This constitutes a violation of 314 CMR 3.08, which specifies that the NPDES permit allows discharges of pollutants only "to the extent specified in the permit," and 314 CMR 3.19(2), which specifies that "[t]he permittee shall comply at all times with the terms and conditions of the permit... ."
- B. During calendar year 2015 through the month of October 2015, the Wheelwright WPCF continued to exceed its NPDES Permit limits for the following: the monthly average limits for BOD, TSS and TP. Since March 2015, Respondent has verbally reported additional exceedances for BOD, TSS and TP; however, Respondent failed to submit electronic reports for the months of March 2015 through October 2015 through USEPA's NetDMR program until November 13, 2015 and copies of the WPCF's monthly operation and monitoring reports for the months of March 2015 through October 2015, until November 23, 2015, as noted in the following paragraph.

Monthly Reporting:

- C. Commencing February of 2014, and continuing until March 2015, Respondent submitted its monthly discharge monitoring reports ("DMRs") by utilizing the USEPA's NetDMR program, attaching an electronic copy of the WPCF's monthly operation and monitoring reports ("MOMR") to their NetDMR

submittal. However, Regulation 314 CMR 12.07(2) requires the Respondent to submit a signed copy of the MOMR to the Department, which Respondent failed to do. From March 2015 to November 13, 2015, Respondent did not submit any monthly reports to NetDMR or the Department. On November 13, 2015, Respondent submitted all DMRs electronically from April through October 2015 via NetDMR. In addition, on November 23, 2015, Respondent submitted hard copies of MOMRs from April through October 2015.

Staffing:

- D. On May 27, 2015, Department personnel inspected the Wheelwright WPCF and found that the Chief Operator was on Administrative Leave with no other personnel present except the Assistant Operator. Pursuant to their presumptively approved Operations & Maintenance (O&M) Manual and Staffing Plan, Wheelwright was required to have two full time Massachusetts certified wastewater operators: one Grade 5C Chief Operator and a Grade 4M Assistant Chief Operator. The failure to have two full-time operators is a violation of regulation 314 CMR 12.04(4), which requires Respondent to implement its O&M and staffing plans as approved.
- E. In addition, regulation 314 CMR 12.04(4) requires Respondent to update its staffing plan every two years, which they have not done. The previous staffing plan submitted was on February 7, 2012, and has not been updated since, in violation of the regulation.
- F. The Gilbertville WPCF is normally staffed by the same personnel that staff the Wheelwright WPCF. The failure to have two full time operators at the Wheelwright WPCF also applies to the Gilbertville WPCF. The failure to have two full time operators at the Gilbertville WPCF also constitutes a violation of 314 CMR 12.04(4).

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

- 7. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
- 8. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

9. Respondent shall perform the following actions:

Permit Limits:

- A. Within thirty (30) days of the effective date of this Consent Order, Respondent shall hire a Massachusetts Registered Professional Engineer (the "Engineer") with knowledge of wastewater-treatment engineering to prepare and evaluate alternatives to return the Wheelwright WPCF to compliance with its NPDES Permit and all applicable regulations.
- B. Within ninety (90) days of the effective date of this Consent Order, Respondent shall submit to the Department a report for Departmental approval, prepared by the Engineer, detailing the causes, alternatives evaluated, and solutions chosen to bring the Wheelwright WPCF into compliance with its NPDES permit limits, including any interim solutions to achieve short-term compliance prior to the implementation of a permanent solution.
- C. Within one hundred twenty (120) days of the effective date of this Consent Order, Respondent shall submit a schedule to the Department, for the Department's review and approval, detailing the timeline necessary for Respondent to make proposed modifications to the Wheelwright WPCF to bring the facility into compliance with its NPDES permit limits. Respondent shall complete all work to bring the facility into compliance by no later than the deadlines set forth in such approved schedule.

Monthly Reporting:

- D. Immediately upon the effective date of this Consent Order, Respondent shall utilize NetDMR to report electronically to the Environmental Protection Agency all Discharge Monitoring Reports ("DMRs") and all other reports required under its NPDES Permit. In addition, Respondent shall also submit all monthly O&M Reports and all other reports required by the NPDES Permit, but not provided to date, in hard copy to the Department.

Staffing:

- E. Within sixty (60) days of the effective date of this Consent Order, Respondent shall have a minimum of two full-time Massachusetts certified wastewater treatment plant operators of sufficient grade as detailed in the February 7, 2012 staffing plan and in compliance with 257 CMR 2.00 to operate both the Wheelwright WPCF and the Gilbertville WPCF. Upon any changes to the WPCF staffing plan, an updated staffing plan shall be submitted to the Department in addition to complying with section 314 CMR 12.04(4).

- F. Within sixty (60) days of the effective date of this Consent Order Respondent shall have the Engineer conduct a staffing analysis of the Gilbertville and Wheelwright WPCFs and shall submit the plan to the Department for review and approval in accordance with the "The Northeast Guide for Estimating Staffing at Publically and Privately Owned Wastewater Treatment Plants". Respondent's current staffing plan provides that some of the duties related to the Gilbertville and Wheelwright WPCFs, their pump stations and collection systems are to be accomplished by Respondent's Highway Department. Respondent's staffing plan should identify those duties at the Gilbertville and Wheelwright WPCFs and their pump stations and collection systems that are to be accomplished by its certified wastewater-treatment-plant operators and those duties that are to be accomplished by Respondent's non-certified wastewater-treatment-plant operators such as Highway Department personnel. The staffing plan should provide for sufficient staffing by Massachusetts certified wastewater treatment plant operators to accomplish those duties assigned to those staff.
- G. If, upon Department approval of the staffing analysis under item F above, the staffing analysis requires an increase in staffing over current levels, Respondent shall hire the necessary additional staff within 90 days of the date of the Department's approval of the staffing plan.
10. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:
- Paul Nietupski, Section Chief, Wastewater Management
Bureau of Water Resources
MassDEP
436 Dwight Street
Springfield, MA 01103
- Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.
11. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
12. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
13. Respondent shall pay to the Commonwealth the sum of six thousand six hundred twelve dollars (\$6,612) as a civil administrative penalty for the violations identified in Part II

above. MassDEP hereby agrees to suspend payment of the entire penalty amount; provided, however, that if Respondent violates "any provision" of this Consent Order, or further violates any of the regulations cited in Part II above within three years of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the full amount of six thousand six hundred twelve dollars (\$6,612) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.
15. This Consent Order may be modified only by written agreement of the parties hereto.
16. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

Respondent reserves any rights it may have to appeal or defend any such order, claim, action, suit, cause of action, or demand, except that Respondent shall not challenge the validity, terms and binding nature of this Consent Order.

Notwithstanding the foregoing, MassDEP agrees that it will not seek to assess Respondent civil administrative penalties beyond those assessed in this Consent Order for the violations identified in Part II above, provided that Respondent satisfies the terms and conditions of this Consent Order and any permit or approval issued hereunder.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
20. In addition to the penalty set forth in this Consent Order (including any suspended penalty), Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates "any provision" of this Consent Order:

For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$100 per day
16 th through 30 th days	\$250 per day
31 st day and thereafter	\$500 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

21. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

- In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.
22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.
23. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Wheelwright and Gilbertville WPCFs for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.
25. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

26. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:

TOWN OF HARDWICK

By: _____

By: _____

By: _____

Board of Selectmen

307 Main Street

P.O. Box 575

Gilbertville, MA 01031

Federal Employer Identification No.: _____

Date: _____

Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Michael J. Gorski

Regional Director

MassDEP

436 Dwight Street

Springfield, MA 01103

Date: _____