MEMORANDUM

To: File, Taunton WWTP, NPDES No. MA0100897

From: Susan Murphy, Permit Writer

Date: March 11, 2015

Re: February 17, 2015 "Supplemental Comments" submitted by John Hall

EPA received the above document, characterized by the sender as "supplemental comments" on the Taunton WWTP Draft Permit, by email on February 17, 2015. Note the public comment period on the Draft Permit closed on June 17, 2013 and therefore this is not a timely comment pursuant to 122 C.F.R. 40 C.F.R. § 124.17(a)(2), and therefore no response is required. EPA has included the document in the Administrative Record for the Final Permit and considered the content of the comment as follows:

EPA disagrees with the legal argument presented in the comment regarding the inclusion of a flow limit on the discharge of treated sewage from this facility. Such a flow limit is within EPA's authority under the Clean Water Act. Sewage treatment plant discharge is encompassed within the definition of "pollutant" and is subject to regulation under the Act. The CWA defines "pollutant" to mean, *inter alia*, "municipal . . . waste[]" and "sewage…discharged into water." 33 U.S.C. § 1362(6). The authorities cited in the submitted document are for the most part isolated sentences from unrelated authorities that appear to support the comment contention only when taken out of context, and do not concern the discharge of treated sewage. See *Orleans Audubon Society v. Lee*, 742 F.2d 901 (5th Cir. 1984) (installation of drainage culverts carrying clear water did not constitute discharge of a pollutant); *Bettis v. Ontario*, 800 F.Supp. 1113 (W.D.N.Y. 1992) (diversion of a natural stream is not a discharge of pollutants); 63 Fed. Reg 43586 (July 13, 2000) (impairment of instream flow due to withdrawals and diversions did not require a TMDL). The VA DOT case cited specifically concerns stormwater discharge, not treated sewage.

Further, EPA may use design flow to both determine the necessity for effluent limitations in the permit that comply with the Act, and to calculate the limits themselves. EPA practice is to use design flow as a reasonable and important worst-case condition in EPA's reasonable potential and water quality based effluent limitations (WQBELs) calculations to ensure compliance with water quality standards under Section 301(b)(1)(C). Should the discharge flow exceed the flow assumed in these calculations, the instream dilution would decrease and the calculated effluent limits would not be protective of WQS. Further, pollutants that did not have the reasonable potential to exceed WQS at the lower discharge flow may have reasonable potential at a higher flow due to the decreased dilution. In order to ensure that the assumptions underlying the Region's reasonable potential analyses and derivation of permit effluent limitations remain sound for the duration of the permit, the Region may ensure its "worst-case" effluent wastewater flow assumption through imposition of a permit condition for flow. Thus, the flow limit is a component of WQBELs because the WQBELs are premised on a maximum level of flow. In addition, the flow limit is necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed water quality standands.

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Using a facility's design flow in the derivation of pollutant effluent limitations, including conditions to limit wastewater effluent flow, is fully consistent with, and anticipated by NPDES permit regulations. 40 C.F.R. § 122.45(b)(1) provides, "permit effluent limitations…shall be calculated based on design flow." POTW permit applications are required to include the design flow of the treatment facility. *Id.* § 122.21(j)(1)(vi).

Similarly, EPA's reasonable potential regulations require EPA to consider "where appropriate, the dilution of the effluent in the receiving water," 40 C.F.R. § 122.44(d)(1)(ii), which is a function of *both* the wastewater effluent flow and receiving water flow. EPA guidance directs that this "reasonable potential" analysis be based on "worst-case" conditions. EPA accordingly is authorized to carry out its reasonable potential calculations by presuming that a plant is operating at its design flow when assessing reasonable potential.

The limitation on sewage effluent flow is within EPA's authority to condition a permit in order to carry out the objectives of the Act. *See* CWA §§ Sections 402(a)(2) and 301(b)(1)(C); 40 C.F.R. §§ 122.4(a) and (d); 122.43 and 122.44(d). A condition on the discharge designed to protect EPA's WQBEL and reasonable potential calculations is encompassed by the references to "condition" and "limitations" in 402 and 301 and implementing regulations, as they are designed to assure compliance with applicable water quality regulations, including antidegradation. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of wastewater effluent is consistent with the overall structure and purposes of the CWA.

In addition, as provided in Part II.B.1 of this permit and 40 C.F.R. § 122.41(e), the permittee is required to properly operate and maintain all facilities and systems of treatment and control. Operating the facilities wastewater treatment systems as designed includes operating within the facility's design effluent flow. Thus, the permit's effluent flow limitation is necessary to ensure proper facility operation, which in turn is a requirement applicable to all NPDES permits. *See* 40 C.F.R. § 122.41.