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RIDEM has entered into Consent Agreements with the Narragansett Bay Commission (NBC) concerning the nitrogen limits recently incorporated into the RIPDES permits for NBC's Bucklin Point and Fields Point treatment plants. The agreements specify the way forward for dealing with the limits contained in the permit modifications.

The two agreements are similar in that they allow NBC a period following completion of construction of initial denitrification facilities to determine if the facilities can meet the 5 mg/l limit. If the initial denitrification facilities cannot meet the permit limits, then NBC is provided time to conduct further planning for additional facilities.

The initial denitrification facilities for Bucklin Point are the recently commissioned wastewater treatment plant improvements which were designed to meet a seasonal average TN limit of 8 mg/l, not a monthly limit of 5 mg/l. The initial denitrification facilities for Fields Point are the facilities now being planned, which must then go through review and approval by RIDEM, engineering design and then construction.

By our analysis, (and assuming that the initial facilities cannot meet the permit limits) it could be as late as July 2013 before the Bucklin Point Plant achieves the limit under the terms of the agreement, and December 2018 before the Fields Point Plant achieves compliance. Attached are two tables showing the sequence of events leading to these dates.

The agreement also contains language that suggests that the plants may never be required to achieve compliance with the 5 mg/l limit. As part of that further planning, NBC is to propose a schedule, which can take the following factors into consideration:

The schedule shall consider the magnitude of noncompliance, the cost and extent of the additional modifications necessary to attain compliance, whether a permit modification is pending and the anticipated water quality benefits.

It thus appears that under the agreement NBC may make arguments to extend the compliance schedule beyond the dates mentioned above based on a variety of factors. Indeed, given certain circumstances, NBC could be in a position to argue that the marginal cost of compliance is so high as to outweigh the benefits, and thus compliance should be forestalled indefinitely.

Bucklin Point Compliance Schedule Estimate

Nov-07 Report on performance due, per agreement end of month
Mar-08 RIDEM approval, allow 4 months
Mar-09 Facilities Plan due, 1 year per agreement
Jun-09 RIDEM Approval, 3 months allowance
Jan-11 Design Complete, 18 month allowance
Jul-13 Construction complete, 2.5 years

Fields Point Compliance Schedule

8/31/2006 Facilities Plan Submitted
12/1/2006 DEM Approval
6/1/2008 Design Submitted, 18 months per agreement
9/1/2008 DEM Approval
9/1/2011 Construction Complete, 3 years
3/1/2013 Submit performance report, 18 mos per Agreement
6/1/2013 DEM Approval
6/1/2014 Submit Facilities Plan, 1 year
9/1/2014 Plan Approval by DEM
3/1/2016 Submit Design, 18 mos
6/1/2016 DEM Approval
12/1/2018 Construction Complete, 2.5 years