

SETTLEMENT AGREEMENT

**In re Town of Wayland Wastewater Management District Commission, NPDES
Permit No. MA 0039853**

1. This Settlement Agreement (“Agreement”) is proposed and entered into by the following parties (“Parties”):

a. The U.S. Environmental Protection Agency, Region 1 (“EPA”);

b. The U.S. Department of the Interior (“DOI”), on behalf of the U.S.

National Park Service (“NPS”) and the U.S. Fish and Wildlife Service;

c. The Town of Wayland Wastewater Management District Commission (“Commission”), and the Town of Wayland (“Town”), both located in Wayland, Massachusetts; and

d. Thomas B. Arnold (“Mr. Arnold”), an individual currently residing in Westford, Massachusetts.

I. PRELIMINARY STATEMENT

2. EPA reissued National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0039853 (“Permit” or “WWTP Permit”) to the Commission on September 30, 2008 authorizing the discharge from the Town of Wayland Wastewater Treatment Plant (“WWTP”).¹

3. On November 14, 2008, the DOI filed a Petition for Review contesting certain conditions of the WWTP Permit (NPDES Appeal No. 08-27). Also in November, 2008, Mr. Arnold filed initial and supplemental Petitions for Review contesting certain conditions of the WWTP Permit (NPDES Appeal No. 08-26).

¹ NPDES Permit No. MA0039853 was issued jointly by EPA and the Massachusetts Department of Environmental Protection (“MassDEP”). However, the MassDEP Permit was not appealed and is therefore not the subject of this Agreement.

4. The Parties wish to resolve NPDES Appeals Nos. 08-26 and 08-27 and this Agreement sets forth a resolution.

5. This Agreement is for settlement purposes only, and neither this Agreement, nor any of its terms or Exhibits hereof, are to be deemed or construed in any way whatsoever as an admission of liability of any claims or allegations asserted against EPA, the Commission or the Town, or as a waiver of any Party's rights or defenses. The Parties enter into this Agreement because they have determined that it is in their best interest to do so. Executing this Agreement does not constitute an admission by any Party as to any fact or any interpretation of law.

II. SETTLEMENT AGREEMENT

WWTP Permit

6. EPA will issue a draft WWTP Permit modification with an accompanying statement of basis pursuant to 40 C.F.R. part 124 as soon as feasible and using all best efforts to complete this work within forty-five (45) days of the date of this Agreement. The draft Permit modification is attached as Exhibit A and includes the following changes as compared to the WWTP Permit issued by EPA on September 30, 2008:

a. A year-round total phosphorus effluent limit of 0.1 mg/l for the discharge to either the wetland or the Sudbury River;

b. The addition of monthly copper sampling using a 24-hour composite for the discharge to the Sudbury River; and

c. The addition of an in-stream monitoring program.

7. To the extent there is an inconsistency between Exhibit A and sub-paragraphs a, b, and c of Paragraph 6, the terms of Exhibit A shall control.

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8. EPA will conduct appropriate notice and comment procedures as required by 40 C.F.R. part 124, review any comments received, and use good faith efforts to issue a final Permit modification within ninety (90) days of the issuance of the draft Permit modification. The Parties acknowledge that an extension of this time may be required if public comment is extensive, if public comment raises issues that, in EPA's sole determination, present substantial questions of law and/or policy, and/or if EPA determines that it is necessary to extend the public comment period and/or conduct a public hearing pursuant to 40 C.F.R. §§ 124.10-124.13.

9. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded to EPA under the Clean Water Act, its obligations under other federal laws, or by general principles of administrative law.

10. Nothing in this Agreement shall be construed to limit or modify EPA's authority or discretion under the Clean Water Act and its implementing regulations to subsequently modify the requirements of the Permit, or to reissue a NPDES permit to the WWTP upon expiration of the Permit issued on September 30, 2008, with terms and conditions that may differ from those of the Permit as issued on September 30, 2008 or as modified pursuant to Paragraphs 6-8. Similarly, DOI, Mr. Arnold, the Town, and the Commission do not waive any, but rather expressly reserve all, of their rights with respect to any such modification or reissuance, including but not limited to, the right to re-assert any objections raised by the Parties in NPDES Appeals Nos. 08-26 or 08-27. Similarly, while the DOI has agreed to the relocation of the outfall pipe, as per Paragraphs 11, 12, 16, 17 and 22 below, for future permit renewals or modifications, the DOI reserves the right to request that EPA impose more stringent conditions, limits, monitoring

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requirements, etc. than those contained in this Agreement for any parameter of the effluent discharged from the relocated discharge pipe. DOI reserves the right to state its position that any future permit renewal or modification by EPA is subject to a new review and certification by the DOI regarding the direct and adverse effects on the SuAsCo Wild and Scenic River (WSR) and for impacts to other federal resources, such as federal property and resource protection areas including the Great Meadows National Wildlife Refuge (NWR) and Minuteman National Park. EPA, the Town, and the Commission reserve all of their rights with respect to any such requests or statements that DOI may make.

11. The DOI, Mr. Arnold, the Town, and the Commission agree not to comment adversely on, or during the public comment period request changes to, the draft Permit modification described in Paragraph 6 and attached as Exhibit A. If EPA submits for public notice a draft Permit modification substantially similar to that described in Paragraph 6 and attached as Exhibit A, and any of the DOI, Mr. Arnold, the Town, or the Commission comment adversely on, or request changes to, said draft Permit modification, then EPA shall be released from its obligations under Paragraph 8 of this Agreement and may in its discretion take any course of action available to EPA by law.

12. The DOI shall submit a notice to the Environmental Appeals Board dismissing NPDES Appeal No. 08-27, and Mr. Arnold shall submit a notice to the Environmental Appeals Board dismissing NPDES Appeal No. 08-26, within 30 days after issuance of the final Permit modification, so long as the final Permit modification is substantially similar to the draft Permit modification in Exhibit A.

In-stream Monitoring

13. In 2009 and 2010, the Commission or the Town shall contribute to the “Water Quality Monitoring in the Lower Sudbury River Project,” (“WQM”) proposed for state approval by the Organization for the Assabet River (“OAR”), up to a maximum annual cost of \$4,500. The WQM is described in more detail in Exhibit D, but may be revised in accordance with the MassDEP approved amended Quality Assurance Project Plan (“QAPP”) WQM for the Lower Sudbury River. Specifically, the Town or the Commission will pay OAR’s costs of collecting and analyzing samples and reporting test results from two locations in the Sudbury River upstream and downstream from the WWTP discharge, and at two other sites in the Sudbury River within or in close proximity to Wayland. Such costs will include a reasonable amount for oversight, instrument calibration and maintenance. OAR will sample once per month, including quality control sampling, from May to September by taking *in-situ* measurements of pH, dissolved oxygen, water temperature, and conductivity and submitting water samples to a state-certified laboratory reasonably acceptable to the Town or Commission for analysis of chlorophyll a, total and ortho-phosphorus, nitrates, ammonia, and total suspended solids. All samples will be obtained prior to 8:30 am. OAR will provide the Town or the Commission with a periodic report documenting the results of its investigation. The financial contribution of the Town or Commission shall be contingent on receipt of periodic reports from OAR documenting the results of its investigation. If the WQM continues beyond 2010, the Town or the Commission will continue to contribute to the WQM as described in this Paragraph, subject to the maximum annual contribution limit

of \$4,500, but in no event will the Town or the Commission be required to pay such costs after the last date on which the WWTP Permit is in effect.

14. In any year the WQM is not being implemented, the Commission or the Town shall conduct the in-stream monitoring program described in Paragraph 13, including quality control sampling, at one location upstream and one location downstream from the WWTP discharge. If a QAPP for the Lower Sudbury River is approved by the MassDEP and EPA as part of the WQM, the in-stream monitoring program conducted by the Commission or the Town shall be consistent with the QAPP.

15. In addition to the above contributions, the Town or the Commission will contribute up to \$6,500 in 2009 toward purchase of a multiparameter meter (“Meter”), selected by OAR and reasonably acceptable to the Town or Commission, for *in-situ* measurement of pH, dissolved oxygen, temperature and conductivity. The Meter will be used and maintained by OAR for the duration of the WQM but will be returned to the Town or the Commission if sampling under the WQM is no longer being conducted.

Outfall

16. EPA’s regional wetlands staff has reviewed the drawings contained in Exhibit B and has provided preliminary comments, contained in Exhibit C, which were transmitted to the Parties by email on June 4, 2009.

17. If the Commission chooses to relocate Outfall 001 to discharge treated effluent into the Sudbury River (“Outfall”) as authorized by the Permit issued on September 30, 2008 and the draft Permit modification attached as Exhibit A, the design of the Outfall will be substantially similar to the drawings attached as Exhibit B, subject to the preliminary comments prepared by EPA and attached as Exhibit C. The Parties

acknowledge that the design and construction of the Outfall is subject to further modification based on final engineering design and on any conditions imposed under Section 404 of the Clean Water Act, the state Wetlands Protection Act, and other applicable federal, state and local laws and regulations.

Non-Point Source Phosphorus Reductions

18. Within 60 days of the date of this Agreement, the Town will amend its Stormwater Management Plan (“SWMP”), developed under the 2003 NPDES Phase II Small MS4 General Permit, by adding a commitment to reduce phosphorus use applied as fertilizer on Town owned lands and open spaces within the watershed of the Sudbury River during calendar year 2010 by 48 pounds per year as compared to a 2008 baseline.

19. Within 60 days of the later of DOI’s dismissal of NPDES Appeal No. 08-27 and Mr. Arnold’s dismissal of NPDES Appeal No. 08-26, the Town will further amend its SWMP (or, if the Town becomes subject to NPDES stormwater requirements through a NPDES permit other than the 2003 NPDES Phase II Small MS4 General Permit, then the Town will amend an equivalent plan or program required by that permit), by extending its commitment to reduce phosphorus use compared against a 2008 baseline, as described in Paragraph 18, for as long as the WWTP Permit remains effective.

20. The Town will notify EPA and the MassDEP of the changes to the SWMP (or other equivalent stormwater plan or program) described in Paragraphs 18 and 19 in accordance with NPDES Phase II Small MS4 General Permit Section II.D.2 (or other equivalent NPDES stormwater requirements), and will provide DOI and Mr. Arnold a simultaneous copy of such notifications.

21. The Town will document phosphorus use applied as fertilizer in its NPDES Phase II Small MS4 General Permit Annual Reports (“MS4 Reports”) submitted to EPA and to MassDEP as follows:

a. The Town’s MS4 Report due in 2010 will include a calculation of phosphorus use in calendar year 2008. Phosphorus use can be documented by purchasing records or such other reasonable methods determined by the Town. The MS4 Report due in 2010 will also document phosphorus use in calendar year 2009; however, the Town’s commitment to reduce phosphorus use by 48 pounds per year does not apply to calendar year 2009.

b. The Town’s MS4 Report due in 2011 (or, if while the WWTP Permit remains effective, the Town becomes subject to NPDES stormwater requirements through a NPDES permit other than the 2003 NPDES Phase II Small MS4 General Permit, then in an appropriate alternate report) will include documentation demonstrating that it has achieved the 48 pound reduction in 2010 as compared to the 2008 baseline.

c. If DOI has dismissed NPDES Appeal No. 08-27 and Mr. Arnold has dismissed NPDES Appeal No. 08-26, and Paragraph 19 applies, then starting in 2012, and continuing annually as long as the WWTP Permit remains effective, the Town will submit to EPA and MassDEP, in its MS4 Reports due annually (or, if while the WWTP Permit remains effective, the Town becomes subject to NPDES stormwater requirements through a NPDES permit other than the 2003 NPDES Phase II Small MS4 General Permit, then in an appropriate alternate report), documentation demonstrating that it has achieved the 48 pound reduction during the previous calendar year as compared to the 2008 baseline.

Comments and Reservations

22. During the comment period for the issuance of the modified WWTP Permit by EPA, the DOI (including the NPS) agrees that in issuing any comment letter (whether or not under Section 7 of the Wild and Scenic Rivers Act), DOI will state that as long as the final Permit modification is substantially similar to Exhibit A, DOI has determined that renewal of the WWTP Permit will not have a direct and adverse effect on the resource values of the Sudbury Assabet and Concord Wild and Scenic River. During the comment period for the issuance of any permit required under Section 404 of the Clean Water Act for the relocation of the Outfall discharge pipe the DOI (including the NPS) agrees that in issuing any comment letter (whether or not under Section 7 of the Wild and Scenic Rivers Act), DOI will state that as long as the final design of the Outfall is substantially similar to Exhibit B, DOI has determined that the issuance of the Section 404 permit will not have a direct and adverse effect on the resource values of the Sudbury Assabet and Concord Wild and Scenic River. DOI and Mr. Arnold further agree that they will not, in any forum, object, appeal, or withhold any concurrence regarding any local, state or federal permit or approval required to construct the Outfall pipe so long as the Outfall pipe authorized by the permit or approval is consistent with this Agreement.

23. The Commission shall provide DOI copies of the discharge monitoring reports that are submitted to EPA pursuant to the WWTP Permit. Due to uncertainties about completion of the new outfall, the timing of increased flows, future copper levels in the discharge, and possible state regulatory changes in its copper limits, DOI is not requesting a mixing zone study at this time. However, DOI reserves its right to submit a request to EPA pursuant to 40 C.F.R. § 124.5(a) requesting that EPA modify the WWTP

Permit, should the phosphorus or copper levels from the outfall be of concern to the DOI regarding impacts to nearby federal lands and resources. DOI reserves the right to request that the scope of work and study plan be provided to it for review and comment before field work is commenced. EPA retains the authority pursuant to 40 C.F.R. § 124.5 to determine whether or not to modify the WWTP Permit, and if so, on what terms, but commits to considering the DOI request in good faith. The Town, the Commission, and Mr. Arnold retain their rights under 40 C.F.R. part 124 to object to DOI's request or any decision by EPA on DOI's request.

24. DOI and Mr. Arnold reserve their rights to state their position that any proposal to increase the daily flow limit above an average of 52,000 gallons per day would be subject to a new review and certification by the DOI regarding the direct and adverse effects on the SuAsCo Wild and Scenic River and for impacts to other federal resources, such as federal property and resource protection areas, including the Great Meadows National Wildlife Refuge and Minuteman National Park; the Town, the Commission, and the EPA retain their rights to object to that position.

III. GENERAL PROVISIONS

25. This Agreement may be executed in counterpart originals, each of which shall constitute a single Agreement for all purposes and shall be effective and binding upon the Parties when each Party has received the signature page thereof fully executed on behalf of the other.

26. This Agreement constitutes the final and entire understanding of the Parties with respect to resolution of all issues regarding NPDES Appeals Nos. 08-26 and 08-27. No

other promises, terms or statements shall be binding or valid, or in any way effective to alter or contest its terms.

27. The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way restrict or modify any of the terms or provisions hereof.

28. Under the terms of this Agreement, whenever notice is required to be given, such notice shall be in writing and shall be directed to the offices of the individuals listed in Paragraph 32. If any names or addresses listed in Paragraph 32 should change, the affected Party shall notify the other Parties.

29. No amendment of this Agreement, or waiver of any obligation created by this Agreement, shall be enforceable unless set forth in a writing signed by all Parties hereto.

30. This Agreement is deemed to have been mutually drafted, and no presumptions are to be made for or against any Party in the event that any term hereof is found to be vague or ambiguous.

31. The Parties agree to use reasonable good faith efforts to informally resolve any dispute that may arise under the terms of this Agreement. If a dispute under this Agreement cannot be resolved at the working level of the Parties, it is agreed that the dispute will be elevated to higher levels within the Parties' respective organizations for attempted settlement prior to any Party taking formal administrative or judicial action with respect to this Agreement. In the event of such a dispute, Mr. Arnold commits to making himself personally available to the concerned Party/ies if he is the party raising the dispute, if the dispute concerns his action or failure to act, or if his agreement is otherwise required to resolve the dispute; and the EPA, DOI, the Town and the

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Commission commit to making officials at higher levels within their organizations available to the concerned Party/ies and, as such officials review the matter, to consider the allegations, the history of litigation, the course of its resolution, and this Agreement in good faith. The Party raising the dispute must give written notice to the other Parties setting forth the nature and basis for the dispute within thirty (30) days from the date on which the dispute arises or the Party first becomes aware of such dispute. If the dispute is not resolved within thirty (30) days from the date of receipt of the written notice, any Party may seek relief that is available by law, and each Party reserves any rights and defenses that Party may have. Upon agreement of the Parties, any dispute involving any provision of this Agreement may be resolved through alternative dispute resolution.

32. The points of contact for matters concerning this Agreement are:

a. For EPA:

Ronald Fein, Esq., Assistant Regional Counsel, or
Carl Dierker, Esq., Regional Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
(617) 918-1040

b. For the DOI:

Robin Lepore, Esq., Senior Attorney, or
Anthony R. Conte, Esq., Regional Solicitor
Office of the Regional Solicitor
Department of Interior
One Gateway Center, Suite 612
Newton, MA 02458
(617) 527-3400

c. For the Commission and the Town:

Frederic Turkington
Town Administrator
Wayland Town Building
41 Cochituate Road

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Wayland, MA 01778-2614
(508) 358-7701

David Schofield
Chairman
Town of Wayland Wastewater Management District Commission
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778

With a copy to:

Adam P. Kahn, Esq.
Foley Hoag LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

d. For Mr. Arnold:

Thomas B. Arnold
At any address he may designate by informing the other parties in writing.


33. The effective date of this Agreement shall be the latest of the dates of the Parties' signatures below.

34. **IN WITNESS THEREOF**, the Parties hereto enter into this Agreement. Each undersigned representative certifies and warrants that he or she has been duly and fully authorized to sign this Agreement on behalf of and legally bind the Party represented.

U.S. Environmental Protection Agency, Region 1

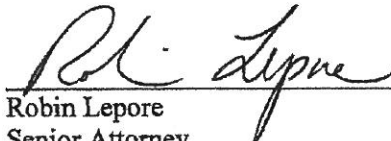
Date: 8/10/09  _____
Ira W. Leighton
Acting Regional Administrator

By its attorney:

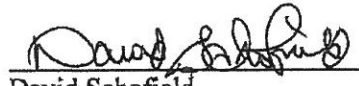
Date: 8/10/2009  _____
Ronald Fein, Esq.
Assistant Regional Counsel

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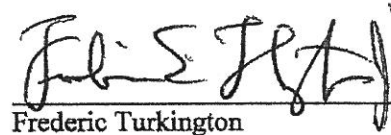
U.S. Department of the Interior

Date: 8/3/2009 
Robin Lepore
Senior Attorney
U.S. Department of the Interior, on behalf of the U.S.
National Park Service and the U.S. Fish and Wildlife
Service

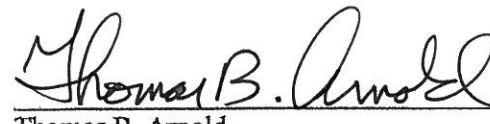
Town of Wayland Wastewater Management District Commission

Date: 8/6/09 
David Schofield
Chairman
Town of Wayland Wastewater Management District
Commission

Town of Wayland

Date: 8/4/09 
Frederic Turkington
Town Administrator
Town of Wayland

Thomas B. Arnold

Date: 8/7/09 
Thomas B. Arnold