

# **ATTACHMENT 10**



Town of Marion  
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Town Administrator

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November 21, 2016

By E-Mail & U.S. First Class Mail

Mr. David Pincumbe  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square  
Suite 100-CMP  
Boston, MA 02109-3912

Subject: Town of Marion NPDES Permit

Dear Mr. Pincumbe:

The Town of Marion is grateful for the opportunity to continue to engage EPA in discussions regarding the Town's wastewater management program and its NPDES permit. We appreciate EPA's patience in working with us as we have examined options to address permit conditions, discharge limits, alternatives evaluation and performance schedules. We face a complex set of challenges, and because of the great costs involved, have wanted everyone to feel comfortable that we are working with the most cost-effective and sustainable ways to achieve the same objectives that serve as the basis of the draft permit.

We have been fortunate to have had the agencies' engagement at meetings in May, June and November of 2015 as well as April 2016 as we have explored a list of options and assessed their various advantages, disadvantages and costs. We believe that the agencies have affirmed the value of the preliminary studies – lagoon water balance, watershed loading analysis, eelgrass field survey, etc. – we proposed, implemented and then reported on. And, we have been encouraged by the agencies' introduction and support for the Town's participation in Wareham's regionalization concept.

We want to acknowledge that EPA's May 2016 proposed schedule was an effort not only to present an alternative path forward but to streamline/narrow the discussions which until that point had taken on a broad sweep, exploring a wide range of alternatives. In addition, we found it highly constructive that the schedule incorporated "outside the box" ideas such as sewerage and regionalization. At the same time, questions were raised regarding those very items and the means to memorialize any arrangements involving them. Both seemed to us to be outside the scope of a permit and therefore able to be addressed only in the context of an agreement on consent. Even then, there are clear obstacles to achieving either of them. Sewerage of an

adjacent municipality is dependent on finalizing an intermunicipal agreement with another town with a number of financial and regulatory considerations, and regionalization is clearly in its very early stages.

In the balance of this letter, we would like to respond specifically to EPA's May 2016 proposed schedule (Attachment A). We do so not in a vacuum, but with the belief that EPA is aware of and has had the opportunity to review a revised proposed schedule from late August 2016 (Attachment B) that represents the collaborative efforts of MassDEP and the Town to work constructively with EPA's proposal. We now review the key elements of the May 2016 proposed schedule and the August 2016 modified schedule.

The May 2016 proposal provided a schedule of actions to be taken within a permit's standard five-year timespan. The proposed schedule incorporates sewerage of areas of Marion as well as Mattapoisett within a three-year period. It calls for closure of a portion of the treatment facility lagoons and the lining of the remaining lagoons within 54 months, with that deadline and applicable interim deadlines being eligible for extension if the Town can document within two years that regionalization is feasible and cost effective, and that it has made a financial commitment to the regional treatment plant. Finally, the May 2016 proposal imposes the draft permit's more stringent nitrogen limit, but allows for the possibility of extending the 5.0 mg/l nitrogen limit until the next permitting action upon successful completion of sewer connections and lagoon lining and closure.<sup>1</sup>

Underlying the August 2016 modified schedule, the combined effort of MassDEP and the Town, is the wish to avoid the costs of facility upgrades should the regionalization option be viable, and should information be obtained with regard to achieving water quality standards through alternate means. The Town believes that it is at least a five-year proposition before any meaningful affirmative decisions will be able to be made with respect to regionalization. That is the primary reason the modified schedule proposes activities spanning eight years. Another key element that the modified schedule builds on is undertaking field studies to determine the impact that the existing lagoons have on Aucoot Cove. Performance of the studies and production of the resulting evaluation report are proposed to happen expeditiously (within two years). Further, if the report's recommendations call for modifications to the lagoons, there is an opportunity to implement those within the span of the proposed eight-year permit. Finally, the modified schedule, recognizing that regionalization may not occur and information may not be obtained with regard to achieving water quality standards through alternate means, commits to completing appropriate treatment facility modifications necessary to achieve the draft permit's nutrient limits.

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Each of the schedules described above consists of a list of activities and associated due dates. Neither, however, indicates, much less establishes, a framework for implementation. The Town believes there are two paths forward.

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<sup>1</sup> The legal mechanism to make this work requires additional discussion. Nonetheless, the Town is relying on including in its permit a provision similar to footnote 3 in NPDES Permit No. MA0100897 issued April 10, 2015 to the City of Taunton which provides: "Antibacksliding prohibitions with respect to the final effluent limitation . . . are not triggered until the WQBEL in the permit goes into effect. Therefore, the WQBEL can be relaxed, if justified, at any time prior to the end of the compliance schedule without triggering antibacksliding prohibition with respect to that limit."

The first path is for EPA to issue the permit in the near term. The most significant deficit in taking this course is that the elements in EPA's own May 2016 proposed schedule that specifically were included to provide some flexibility to the Town – sewerage and regionalization – would not be part of the path forward since such terms are outside of an NPDES permit's bounds. The Town is puzzled as to why such ideas would be advanced absent a mechanism for them to be implementable.

Be that as it may, were the permit to be issued, the Town would be compelled to file an appeal. We have been advised that without significant modifications to the draft permit, there are solid grounds for an appeal involving among other things the permit's efforts to regulate groundwater and invoke the 503 regulations. Once an appeal is filed, we understand there would be pressure on the parties to resolve their differences, with one option being resolution through an administrative order. Ultimately, such an administrative order would set certain obligations and a schedule for their implementation. That schedule likely would consider the possibility of regionalization and the need for the Town to determine the viability of regionalization for its own wastewater management. It might also involve the Town agreeing to perform activities that would have been challenged as beyond EPA's jurisdictional authority as part of any appeal. In which case, for purposes of this letter, the Town questions the efficacy of EPA electing to take the first path.

The second path, one that the Town heavily favors, is for EPA to forego issuing the permit at this time and instead negotiate an agreement that would allow the Town to (1) move forward now with certain actions the draft permit requires, (2) actively engage in the regionalization planning that would make it possible for the Town, in a five-year timeframe, to determine if it is more cost effective for the Town to manage its own wastewater or join a regional plan, and (3) undertake certain activities and complete a series of studies (described below) with respect to the treatment facility, the receiving waters and groundwater. The Town's goal is to avoid making capital outlays that would be needlessly expended if regionalization proved to be a viable and reasonable option. The five-year timeframe was selected because it is our understanding that it is the minimum timeframe for the regionalization proponents to learn if the plan is viable and establish the preliminary cost to implement it. Additionally, five years would be more than adequate for the Town to complete the studies needed to manage its own wastewater.

Consistent with the August 2016 modified schedule, the Town is prepared to commit in a written agreement to the following:

- *CMOM*. Implement all current Capacity, Management, Operations and Maintenance (CMOM) requirements as well as those in the draft permit.
- *Reliability modifications at wastewater treatment facility*. Design and implement sequencing batch reactor control modifications to increase flow through the process, improved metering, soda ash feed system improvements for pH control, and miscellaneous repairs.
- *Aucoot Cove sewerage*. (1) Complete the contracted work through a grant from the Buzzards Bay National Estuary Program. (The work calls for a 30% design in Mattapoisett and a 50% design in Marion.) (2) Examine potential for alternative sewerage areas in Marion. (3) Complete the design of the sewers in the Indian Cove (or equivalent area) in Marion, and advance the concept of sewerage the Harbor Beach neighborhood in

Mattapoisett through an intermunicipal agreement (IMA) or other vehicle. (4) Construct sewers in Marion and fulfill requirements of a negotiated IMA, if any, with Mattapoisett.<sup>2</sup> (5) Complete a Comprehensive Wastewater Management Plan.

- *Regionalization.* Actively participate in on-going regionalization planning. Complete a wastewater needs assessment to determine what portion of the Town would be targeted for sewerage under a regionalization alternative (buildout analysis equivalent for ultimate sewerage area). Prepare concept design and cost evaluation of a connection to Wareham regional facility. Begin discussion of terms with the regionalization entity. Provide annual updates to regulatory agencies.
- *Lagoon evaluation report.* Complete field studies and possibly groundwater modeling to determine any impact that the existing lagoons may have on Aucoot Cove.
- *Total phosphorous.* Responding to a MassDEP request, reduce total phosphorous in the effluent in the near-term through construction of temporary chemical feed facilities.<sup>3</sup>
- *Recommended plan.* Report on the status of sewerage and regionalization, and the results of the various studies, and advise on appropriate next steps.<sup>4</sup>

A potential schedule is shown on attached Figure 1, which assumes the work would start in the first quarter of 2017. The Town is also prepared to discuss and potentially commit to undertaking the following additional studies:

- *Effluent groundwater discharge.* Advance studies of feasibility of groundwater discharge by installing wells and data loggers at each of the candidate sites previously identified, conducting infiltration tests, and performing a preliminary design of routing and cost analysis of the candidate sites. Based on early findings, the Town can elect to discontinue pursuing this option to completion.
- *Constructed wetland.* Develop, design and construct pilot wetland. Operate and assess performance over 2-year growing seasons. Based on early findings, the Town can elect to discontinue pursuing this option to completion.
- *Extension of the existing outfall to the head of the salt marsh.* Perform pre-design studies to finalize alignment, and prepare preliminary design of the outfall extension.

Given that essentially the same studies will need to be conducted regardless of whether a permit is or is not issued, the Town proposes and prefers a binding agreement with the agencies to conduct an agreed-upon scope of work. It is the Town's expectation that either regionalization will be the approach forward or the studies discussed above will indicate the reasonableness and thus the need to implement one of the alternative mechanisms to protect water quality in the receiving water body. The upside of the regionalization planning being in its early stages is that

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<sup>2</sup> The Town is prepared to begin the process of advancing sewer extensions, but any implementation will be dependent on a series of contingencies outside of our control, i.e., involving arrangements with a neighboring town. Further, the process needs to acknowledge that Mattapoisett could consider conveying wastewater from Old Harbor Beach to Fairhaven for treatment. Accordingly, the schedule should be flexible, and the overall plan should consider alternatives if it appears that the sewer extensions are not going to happen.

<sup>3</sup> Provided the regulatory agencies agree that the sludge can either, at the discretion of the Town, be disposed in the existing lagoons or hauled to an approved disposal location.

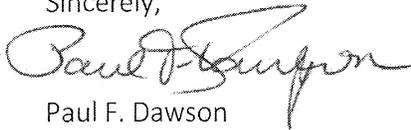
<sup>4</sup> The Town has begun to develop a Financial Capacity Analysis (FCA), which will help EPA, MassDEP and the Town understand how much can be spent in the years ahead to address the issues. Even when we establish the list of projects that must be undertaken, the final plan and associated schedule will be based on the FCA. Consequently, any administrative order would need to be developed with this information in mind.

the timeframe for a decision on its viability affords the Town and the regulatory agencies the time to undertake the activities described above.

In conclusion, the Town wants very much to work with EPA and MassDEP to reach an agreement that creates the framework for a planning and implementation process. This letter makes clear that the Town is prepared to make important early commitments on some projects, and is proposing well-evaluated projects and an accompanying schedule to address the issues in an effective way. The Town cannot afford to repeat the history of the past ten years, where it has spent millions of dollars on a substantial plant upgrade only to have EPA now determine that it is ineffective in satisfying our regulatory obligations. With an administrative order requiring a plan and implementation schedule, we believe that it would be reasonable to defer issuance of a new permit while achieving our common objectives.

Clearly, there are still a number of technical, legal and logistical issues that need to be worked through with EPA and MassDEP to make this ambitious program work, and we look forward to continuing discussions. Please contact me at (508) 748-3550 to discuss how we can memorialize this proposal as soon as possible.

Sincerely,



Paul F. Dawson  
Town Administrator

Attachments

cc (w/ attachments) (by e-mail):

Mr. Ken Moraff, EPA  
Mr. David Webster, EPA  
Mr. Samir Bukhari, Esq., EPA  
Ms. Beth Card, MassDEP  
Mr. Doug Fine, MassDEP  
Mr. David Ferris, MassDEP  
Marion Board of Selectmen  
Mr. Robert Zora, Marion DPW Superintendent  
Mr. Jonathan Witten, Esq., Marion Town Counsel  
Mr. Robert Otoski, CDM Smith  
Ms. Bernadette Kolb, CDM Smith  
Mr. Michael A. Leon, Esq., NMF  
Mr. Gary L. Gill-Austern, Esq., NMF

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Marion Draft Proposed Schedule

In order to comply with the total phosphorus and total nitrogen permit limits and the Operation and Maintenance requirements relative to the unlined lagoons, the Permittee shall take the actions identified below.

1. From the effective date of the permit until forty eight (48) months from the effective date of the permit, the Permittee shall report monthly average total phosphorus and shall achieve an annual average total nitrogen concentration of 5.0 mg/l or less.
2. Within twelve (12) months of the effective date of the permit, the Permittee shall complete planning and design documents for sewerage the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett.
3. Within eighteen (18) months of the effective date of the permit, the Permittee shall complete and submit to EPA and MADEP an evaluation of the feasibility and cost effectiveness of connecting to a regional wastewater treatment plant at Wareham.
4. Within twenty-four (24) months of the effective date of the permit, the Permittee shall initiate design of the lagoon and wastewater treatment facility modifications necessary for closing a portion of the lagoons, lining the remaining lagoons, and addressing the total phosphorus limit of 0.2 mg/l either through additional treatment capabilities or through relocation of the discharge. An extension of this time frame, as well as the time frame for tasks 6, 8, and 9 below, may be requested if the Permittee documents that the regional treatment plant is feasible and cost effective, the Permittee has made a financial commitment to the regional treatment plant, and construction of sewers for the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett has been initiated.
5. Within twenty-four (24) months of the effective date of the permit, the Permittee shall initiate construction of sewers for the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett.
6. Within thirty six (36) months of the effective date of the permit, the Permittee shall complete design and initiate construction of the lagoon and wastewater treatment facility modifications necessary for closing a portion of the lagoons, lining the remaining lagoons, and achieving the total phosphorus limit of 0.2 mg/l.
7. Within thirty-six (36) months of the effective date of the permit, the Permittee shall complete construction of sewers for the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett.
8. Within forty eight (48) months of the effective date of the permit, the Permittee shall complete construction of the wastewater treatment facility modification necessary for closing a portion of the lagoons and for achieving the total phosphorus limit of 0.2 mg/l.
9. Within fifty-four (54) months of the effective date of the permit, the Permittee shall remove all sediments and close the unlined lagoon(s) that were identified as excess capacity such that ongoing nitrogen loadings to groundwater are eliminated and shall complete the lining of all lagoons that will remain in service.

10. Upon successful completion of sewer connections (Item #7) and lagoon lining and closure (Item #9), the Permittee may request a modification of the 3.0 mg/l total nitrogen limit. In that case, the interim limit for total nitrogen, identified in #1 above, would remain in effect until the next permitting action.

## ATTACHMENT B

### Marion Draft Proposed Schedule

In order to comply with the total phosphorus and total nitrogen permit limits and the Operation and Maintenance requirements relative to the unlined lagoons, the Permittee shall take the actions identified below.

#### **Interim Effluent Limits**

1. From the effective date of the permit, the Permittee shall report the monthly average total phosphorus and shall achieve a seasonal (May 1 to October 31) average total nitrogen concentration of 5.0 mg/l or less. From November 1 to April 30, the existing treatment plant shall be operated to minimize effluent nitrogen levels.
2. Within six (6) months of the effective date of the permit the permittee shall submit a report outlining steps to optimize phosphorus removal with existing equipment and chemical addition. Within twelve (12) months of the effective date of the permit, the permittee shall implement the recommendations in the optimization report.

#### **Sewers**

3. Within twenty-four (24) months of the effective date of the permit, the Permittee shall complete planning and design documents and initiate construction of sewers for the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett, or for areas that will remove an equivalent amount of nitrogen loading from the watershed.
4. Within forty- eight (48) months of the effective date of the permit, the Permittee shall complete construction of sewers for the Indian Cove district of Marion and the Harbor Beach neighborhood of Mattapoisett, or for areas that will remove an equivalent amount of nitrogen loading from the watershed.

#### **Lagoons**

5. Within six (6) months of the effective date of the permit, the Permittee shall submit a scope of work to EPA and MassDEP for the evaluation of the impact the existing lagoons have on Aucoot Cove (Lagoon Evaluation Report). EPA and MassDEP shall provide approval of the scope within one (1) month after the date the scope is received.
6. Within twenty-four (24) months of the effective date of the permit, the permittee shall submit to EPA and MassDEP the Lagoon Evaluation Report including recommendations on the disposition of the lagoons.
7. Within thirty- six (36) months of the effective date of the permit, based on the recommendations in the Lagoon Evaluation Report, the Permittee shall submit to EPA and MassDEP for approval an engineering report and schedule for modifications necessary for closing those portions of the lagoons not required, lining the remaining lagoons, and alternative sludge disposal.

### **Regionalization/Facility Upgrades**

8. Within sixty (60) months of the effective date of the permit, the Permittee shall complete and submit to EPA and MassDEP an evaluation of the feasibility and cost effectiveness of connecting to a regional wastewater treatment plant at Wareham with a schedule for all the activities to be completed by Marion in association with the implementation of the regional solution including the closing of the Marion wastewater treatment facility. Annually the Town shall provide an update on the regionalization activities for the prior year.
9. Unless the permittee provides information to the contrary with regards to nutrient limits and the Permittee has not committed to a regional approach, within seventy-two (72) months of the effective date of the permit, the Permittee shall complete design of facility modifications necessary and achieving the total phosphorus limit of 0.2 mg/l, either through additional treatment capabilities or through relocation of the discharge, and a total nitrogen limit of 3 mg/l.
10. Unless the permittee provides information to the contrary with regards to nutrient limits and the Permittee has not committed to a regional approach, within ninety-six (96) months of the effective date of the permit, the Permittee shall complete construction of the wastewater treatment facility modification necessary for achieving the total phosphorus limit of 0.2 mg/l and a total nitrogen limit of 3 mg/l.

FIGURE 1

For Discussion Only

Town of Marion - Schedule for Assessment of Alternative Compliance Pathways - DRAFT  
November 21, 2016

Alternative Compliance Pathway	Study/Activity Quarters from Start	2017				2018				2019				2020				2021			
		1Q	2Q	3Q	4Q	1Q	2Q														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18		
CMOM	Implement current requirements and those in draft NPDES permit																			→	
Implement Treatment Plant Modifications	Reliability modifications																				
Aucutt Cove Sewering	Seek to negotiate IMA with Mattapoisett																				
	Finish DBNEP grant 30% design in Mattapoisett, 50% design in Marion																				
	Determine if additional Marion properties can be sewered																				
	Grant or Town Meeting funding to complete design																				
	Finish design and costs, permitting, easements. Complete CWMP.																				
	Complete bidding & construction																				
Regionalization	Actively participate in planning process with BBC and partner communities																			→	
	Complete buildout analysis																				
	Complete alternatives analysis to pump wastewater to Wareham POTW																				
	Determine cost effectiveness for Marion's costs																				
	Create comparable feasibility plan to regionalization where all desired parcels in Marion are sewered and handled at Marion's POTW																				
	Review BBC interim feasibility reports				*																
	Conduct 2-year water quality monitoring, and data processing																				
	Hydrodynamic modeling (assumes 2 years of WQ data needed)																				
	Conduct and report on other OSA monitoring (3-year duration assumed for data collection)																				could take longer if not started until after first grant work completed
	Investigate groundwater discharge option and other alternatives																				
	Preliminary Design Report for outfall pipeline, treatment plant upgrades, and collection system improvements																				
	Finalize planning, start design, permitting, easement acquisition, and M&PA process documents																			→	→
	Discussion and negotiation of terms with regional entity																				→

FIGURE 1

Alternative Compliance	Study/Activity	2017				2018				2019				2020				2021		
		1Q	2Q	3Q	4Q	1Q	2Q													
Groundwater Discharge	Confirm candidate sites, such as land ownership																			
	Drilling and water level monitoring and evaluation																			
	Infiltration testing at screened site(s)																			
	Routing and cost analysis to convey wastewater to screened site(s)																			
	TM on groundwater discharge																			
Constructed Wetland (assumes seasonal total nitrogen limit)	Develop and design a pilot program and monitoring protocol																			
	Build wetland pilot (assumes permitting, if needed, is straightforward)																			
	Initiate 2 growing season pilot study																			
	Assess pilot performance																			
	TM on Constructed Wetland																			
Relocation of outfall to head of salt marsh	Wetlands flagging and archeological resource identification																			
	Survey and geotechnical investigations																			
	Preliminary Design Report																			
<b>Develop Recommended Plan</b>																				

\* Marion's known costs would include decommissioning treatment plant and lagoons; constructing new pump station(s) and pipeline to transfer raw wastewater to Wareham; remaining debt service (does not include Marion's share of Wareham infrastructure and operations cost such as new outfall line, and POTW upgrades)

Legend		
	*	BBC milestone to assess regionalization project feasibility
		Work to be done by BBC or partner communities, but schedule is not known
		Work to be done by Marion
		Work to be done by Marion, but schedule is not known