



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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May 27, 2008

Brian Pitt  
NPDES Municipal Permits Branch  
USEPA – New England  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023

**Re: Water Quality Certification  
NPDES Permit MA0100595  
City of Attleboro WWTP**

Dear Mr. Pitt:

Your office has requested the Massachusetts Department of Environmental Protection to issue a water quality certification pursuant to Section 401(a) of the Federal Clean Water Act ("the Act") and 40 CFR 124.53 for the above referenced NPDES permit. The Department has reviewed the proposed permit and has determined that the conditions of the permit will achieve compliance with sections 208(e), 301, 302, 303, 306, and 307 of the Federal Act, and with the provisions of the Massachusetts Clean Waters Act, M.G.L. c. 21, ss. 26-53, and regulations promulgated thereunder. The permit conditions are sufficient to comply with the antidegradation provisions of the Massachusetts Surface Water Quality Standards [314 CMR 4.04] and the policy [October 6, 1993] implementing those provisions. The effluent limits for nitrogen are not necessary to comply with Massachusetts Surface Water Quality Standards and therefore are federal only requirements.

While we agree that the permit complies with Massachusetts Water Quality Standards we believe that some of the bases that EPA has used in arriving at the conditions in the permit warrant comment.

EPA correctly states in the response to comments that they have the responsibility to take into consideration the water quality standards of downstream states. They also have the responsibility to ensure that the downstream standards do not place an unnecessary burden on upstream states. In the case of the phosphorus limits, EPA applied Rhode Island water quality for lakes to an impoundment. This impoundment was the result of manmade activity that interrupts the natural flow of the river and therefore places a higher standard on upstream communities based on a deliberate choice to modify the river by downstream entities. In setting the phosphorus limits based on lakes criteria rather than free flowing criteria EPA has chosen to place the entire burden for mitigation of the impairment on upstream communities rather than working with Rhode Island to remove the major cause of the impairment (removing the dam) or working with both states to develop an equitable distribution of costs associated with the mitigation. Without removal of the dam it can be anticipated that even with the new phosphorus

limits it could take decades for the system to clean itself and allow the river to attain water quality standards.

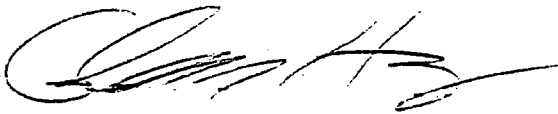
The permit does not contain a schedule for the permittee to attain the phosphorus limit. Therefore as a condition of the state's certification we are requiring the following schedule for achieving the phosphorus limits.

1. Within 6 months of the effective date of the permit, the permittee shall complete an engineering report on the facilities necessary to achieve the total phosphorus limit.
2. Within 18 months of the effective date of the permit, the permittee shall complete design of the facilities necessary to achieve the total phosphorus limit.
3. Within 24 months of the effective date of the permit, the permittee shall initiate construction of the facilities necessary to achieve the total phosphorus limit.
4. Within 42 months of the effective date of the permit, the permittee shall complete construction and begin operations of the facilities necessary to achieve the total phosphorus limit.
5. Within 48 months of the effective date of the permit, the permittee shall achieve the total phosphorus limit.

MassDEP has already submitted substantial comments on the lack of a TMDL for nitrogen and the use of MERL for setting wasteload allocations and the lack of load allocations for discharges to Narragansett Bay. We will not repeat those concerns here. However, while the claim has been made that the Narragansett system is too complex for Rhode Island to be able to develop a nitrogen TMDL, that does not change the fact that the law requires TMDLs to be developed for all impaired waters and EPA has the authority and obligation to either require the states to do a TMDL or do it themselves. EPA acknowledges that RI has spent considerable resources on trying to develop a TMDL and now they have chosen to shift the burden to upstream communities by requiring them to spend significant resources on meeting wasteload allocations developed absent a TMDL. While the nitrogen effluent limits are a federal only requirement and EPA has the Authority to set water quality based limits absent a TMDL, we believe that proceeding absent a TMDL is unfair to Massachusetts dischargers.

The Department hereby certifies the referenced permit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn Haas', with a stylized flourish at the end.

Glenn Haas, Director  
Division of Watershed Management  
Bureau of Resource Protection

cc: Paul Hogan  
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