

EXHIBIT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John P. Bohenko, City Manager
Office of City Manager
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

RECEIVED
JUN 28 2001
JES-WEB

JUN 26 2001

Re: Request for Information Pursuant to Section 308 of the Clean Water Act for the City of Portsmouth's NPDES draft permit NH00100234 and Section 301(h) waiver

Dear Mr. Bohenko:

This letter is to inform you that after review of your permit application, your Section 301(h) waiver application, your compliance history, and other relevant information, it does not appear to EPA-New England that the Portsmouth Wastewater Treatment Facility will be able to meet the waiver requirements pursuant to Section 301(h) of the Clean Water Act (the "Act").

However, before EPA denies your waiver request and issues Portsmouth a permit based on Part 133 Secondary Treatment Regulations, we want to give the City an opportunity to provide further information which may support continued consideration of a Section 301(h) waiver.

Background

The City of Portsmouth, NH owns and operates a primary wastewater treatment plant which discharges to the Piscataqua River. The City applied for, and obtained a waiver of secondary treatment pursuant to Section 301(h) of the Clean Water Act. The final approval of the 301(h) waiver application came with the issuance of an National Pollutant Discharge Elimination System (NPDES) permit, in 1985, with limitations based on primary treatment. That permit expired in early 1990 along with the Section 301(h) waiver. The treatment plant was constructed under a schedule contained in a federal court order.

After completing construction of its primary treatment plant, the City was unable to consistently meet 30 percent removal of five-day Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS). Additionally, the City has frequently violated its permitted limits for Total Coliform bacteria. It also routinely discharges total residual chlorine (TRC) in concentrations far in excess of state water-quality standards. Most recently, effluent sampling indicates that the facility would immediately violate Whole Effluent Toxicity (WET) limits in a proposed NPDES permit. These exceedances of technology-based and water quality-based standards make the facility ineligible for a Section 301(h) waiver.

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A bypass resulting in bacteria violations in November 2000 demonstrated that the facility's effluent is not immediately flushed out to the Atlantic Ocean, as originally thought. Apparently, the effluent may become entrained along the tidal mud flats upstream and downstream of the treatment work's outfall. This is further supported by a dye study conducted by EPA in May of 1999 which showed that the facility's effluent migrates between Shapleigh Island and Goat Island and into the area known as Little Harbor during ebb tide. Little or no biological monitoring of this area has been performed in support of your Section 301(h) waiver request. Without additional information, EPA cannot make the determination that a balanced indigenous population of shellfish, fish, and wildlife exists in areas beyond the zone of initial dilution where marine life is actually or potentially affected by the discharge.

According to federal regulations, the City must reapply for its 301(h) waiver with each timely NPDES reapplication in order to retain that waiver. EPA must review this application together with any other information available and then decide whether or not a continuation of the Section 301(h) waiver is justified. The implementing regulations for a Section 301(h) waiver are found at 40 Code of Federal Regulations (CFR) Part 125, Subpart G, "Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act." These regulations were modified and repromulgated in 1994.

Permit Reissuance

The City's NPDES permit expired in early 1990 but remains in effect pursuant to the Administrative Procedures Act. Reissuance of this permit must include a decision on whether or not to reauthorize the Section 301(h) waiver of secondary treatment. EPA has initiated the reissuance of the City's NPDES permit on several occasions since 1990, but because of the ongoing plant problems and the lack of information regarding the discharge's environmental impact on the receiving water, EPA has been unable to make a decision on whether or not to reauthorize the 301(h) waiver.

It is clear that the City's current discharge would not meet proposed effluent limitations for total residual chlorine, whole effluent toxicity, and possibly fecal coliform bacteria on a regular basis (see EPA's November 14, 2000 and January 19, 2001 letters to the City of Portsmouth). In addition, the City has not made the showing that a balanced indigenous population of shellfish, fish, and wildlife exists immediately beyond the zone of initial dilution and in all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by Portsmouth's discharge as is necessary to obtain a Section 301(h) waiver.

Section 308 of the Act, 33 U.S.C. § 1318, authorizes the EPA to require owners and operators of point sources, such as the City of Portsmouth's Wastewater Treatment Facility to provide such

information as EPA may reasonably require in order to carry out the objectives of the Act, including but not limited to developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance.

Specifically, the information will be used for the consideration of a Section 301(h) waiver and the development of a NPDES draft permit for the above named facility.

Therefore, pursuant to EPA's authority under Section 308 of the Act, the City of Portsmouth is required to submit the following information to EPA:

1. The City has plans to upgrade its disinfection facilities to correct both the TRC and bacteria violations and believes it has remedied the BOD₅ and TSS percent removal problem by adding chemicals to enhance removal. Within 21 days of receiving this letter, submit the schedule for completing the ongoing modifications to the WWTF. Include a description of all work to be completed as part of the project and estimate the improved effluent quality as a result of such work.

2. Within 30 days of receiving this letter, submit a Toxicity Reduction Evaluation (TRE) study plan and schedule detailing the toxicity reduction procedures to be employed. EPA's Toxicity Reduction Procedures, Phases 1, 2, and 3 (EPA-600/3-88/034, 035, and 036) and TRE protocol for POTW's (EPA-600/2-88/0620) shall be the basis for this plan and schedule. The implementation schedule should describe the time frame for completion of specific components of the TRE plan. The study plan shall include a specific date for concluding whether or not secondary treatment will be necessary to reduce whole effluent toxicity to the proposed effluent limits.

The study plan will be approved and/or modified by EPA and Portsmouth shall comply with the TRE schedule immediately upon such approval and/or modification by EPA.

Portsmouth shall submit the results of the TRE, including a summary of findings, corrective actions required, and data generated per the approved schedule.

3. Within 45 days of receiving this letter collect, analyze, and submit the results of a priority pollutant scan of the effluent as per 40 CFR 122, Appendix J, Tables 1A, 1 and 2.

4. Within 60 days of receiving this letter, submit to EPA and NH DES a proposed sampling plan that will demonstrate that the Portsmouth discharge can meet water quality standards and is protecting the balanced indigenous population. We have enclosed the City of Gloucester's monitoring program for your reference. The May 1999 EPA dye study results shall also be made available to you upon request.

In preparation of this plan, please include proper levels of sample replication and control samples. Upon approval of this plan, Portsmouth will be instructed to begin collecting data. Portsmouth should include monitoring of the "backchannel" and Little Harbor areas. The "backchannel" area is defined as the embayment bordered by Portsmouth, New Castle, and Route 1B.

5. Within 90 days of receiving this letter, submit a complete application pursuant to 40 CFR Part 125, Subpart G "Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act." (See 40 CFR 125.59(c)).

6. Within 90 days of receiving this letter, submit an updated dilution factor calculation for the presently configured outfall as required by EPA's January 19, 2001 request for information. Also submit any plans to modify the outfall to obtain more dilution.

7. Within 90 days of receiving this letter, submit an inspection report on the condition of the facility's pipe and outfall. This inspection should include a dive survey, video of existing conditions, and any other information necessary to document the condition of the pipe and outfall. The inspection should identify the integrity of any exposed pipe which may be lying on the floor of the estuary leading from the shoreline to the outfall. The report shall include a recommendation for maintenance and/or replacement to ensure that the outfall and pipe are free of defects which would affect the dilution of your effluent in the receiving water.

8. The City shall submit a written report on the status of the plant operation, the plant upgrades, and the progress in satisfying this 308 request one month after receiving this letter. The City shall continue to submit status reports each month until such time as EPA decides the status reports are no longer necessary.

These reports shall include, at a minimum, plant operational data for the previous month including: 30 percent removal of BOD and TSS, chlorine residual, chlorine use for that month (pounds), bacteria (both fecal and total), any equipment malfunctions and corrective actions for such malfunctions, any equipment bypasses, the amount of septage received and its origin, and status of the TRE. The reports will specifically identify any violations of current permit conditions or failure to meet 30 percent removal of BOD or TSS.

These status reports shall include updates on every item in this request as well as reporting on the plant upgrades.

Guidance on How to Respond

Please respond separately to each of the questions, referencing each question by number. The response must include copies of all records and information available to the City that are referenced in the response. As part of the response, please complete the enclosed declaration (**Attachment No. 1**) and provide a cover letter specifying what documentation has been appended to the response to answer each question. If the documentation that supports a response to one item duplicates the documentation that supports the response to another item, submit only one copy of the documentation. The submission must be a self-explanatory, complete response that is dated and signed by an authorized City official.

Important Information About This Request and the Response

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully, or to adequately justify any failure to respond may result in an enforcement action by EPA pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, which provides for administrative, civil, and criminal penalties. In addition, any person who knowingly submits false information may be subject to criminal prosecution under 18 U.S.C. § 1001.

The information requested herein is not subject to the requirements of the Paperwork Reduction Act.

As indicated above, all requested information must be submitted to EPA as outlined in the information request above. Information submitted pursuant to this Section 308 information request shall be sent by certified mail and shall be addressed as follows:

Linda M. Murphy, Director, CAA
Office of Ecosystem Protection
United States Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, MA 02114-2023
Att: Damien Houlihan

Harry T. Stewart, P.E., Director
Water Division
New Hampshire Department of Environmental Services
P O Box 95
Concord, NH 03302-0095

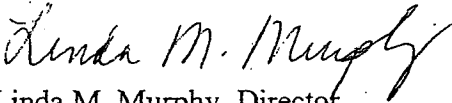
The City of Portsmouth may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at CWA § 308(b) and 40 C.F.R. Part 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and

by means, of the procedures set forth at 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the City of Portsmouth.

Unless the City can provide full, complete, accurate, and timely information to support continued consideration of a Section 301(h) waiver, EPA will deny your Section 301(h) waiver request and issue a NPDES permit based on secondary treatment standards, 40 CFR Part 133. The City should be as comprehensive as possible and should supply any and all information which would support the continuation of the Section 301(h) waiver.

Should you have any questions or would like to discuss the contents of this letter, please feel free to contact Damien Houlihan, Environmental Engineer, at (617) 918-1586 or Carl DeLoi, Manager, New Hampshire State Unit, at (617) 918-1581.

Sincerely,



Linda M. Murphy, Director
Office of Ecosystem Protection

cc: Carl DeLoi, Director, New Hampshire State Unit
Damien Houlihan, EPA-New Hampshire State Unit
Eric Hall, EPA-Water Technical Unit
Phil Colarusso, EPA-Water Quality Unit
John Hackler, EPA-NPDES Task Force
Mr. George Berlandi, NHDES-WD
John R. Bush, Administrator, NHDES-WD, WWEB
Jeffrey G. Andrews, NHDES-WD, SWQB
George Neill, NHDES-WD, WWEB
David S. Allen, City Engineer, Portsmouth
James J. Donison, Water/Wastewater Engineer, Portsmouth
Steven Clifton, Underwood Engineering

Attachment