

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF)	
)	DOCKET NO.
Town of Epping, New Hampshire)	CWA-AO-R01-FY23-10
NPDES Permit No. NHG580012)	
)	ADMINISTRATIVE ORDER
Proceedings under Sections 308(a) and)	
309(a)(3) of the Clean Water Act,)	
as amended, 33 U.S.C. §§ 1318 and)	
1319(a)(3))	

I. STATUTORY AUTHORITY

The following Findings are made and Administrative Order (“Order”) issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the “Act” or “CWA”), 33 U.S.C. §§ 1318(a) and 1319(a)(3). Section 309(a)(3), 33 U.S.C. § 1319(a)(3), of the Act grants to the Administrator of the U.S. Environmental Protection Agency (“EPA”) the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System (“NPDES”) permit issued under Section 402 of the Act, 33 U.S.C. § 1342, including any permit issued under an authorized state NPDES program. Section 308(a), 33 U.S.C. § 1318(a), of the Act authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to the EPA, Region 1 Administrator, and in turn to the Director of the EPA, Region 1 Enforcement and Compliance Assurance Division (“Director”).

The Order herein is based on findings of violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. NHG580012. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order provides a schedule which the Director has determined to be reasonable.

II. DEFINITIONS

Unless otherwise defined herein, terms used in this Order shall have the meaning given to those terms in the Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder, and any applicable NPDES permit. For the purposes of this Order, “Permit” means the Town of Epping NPDES Permit, No. NHG580012 (“the Permit”) and all amendments and modifications thereto, and renewals thereof, as are applicable and in effect at the time.

III. FINDINGS

The Director makes the following findings of fact:

1. The Town of Epping (the “Town” or “Permittee”), established under the laws of the State of New Hampshire, is a “municipality” as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. The Town is a person under Section 502(5) of the Act, 33 U.S.C § 1362(5). The Town is the operator of a Wastewater Treatment Facility (“WWTF”) from which it discharges pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Lamprey River.
3. The Lamprey River is a “navigable water” under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
4. On September 28, 2021, EPA Region 1 issued the Small Wastewater Treatment Facilities General Permit (NPDES Permit No. NHG580000) for eligible WWTFs that discharge wastewater from a Publicly Owned Treatment Works (“POTW”) and other treatment works that treat domestic sewage. The General Permit became effective on April 1, 2022.
5. The Permit authorizes the Town of Epping to discharge pollutants from outfall serial number 001 to the Lamprey River, subject to the effluent limitations, monitoring requirements and other conditions specified in the Permit. Part I.A.1 of the Permit establishes effluent limitations and monitoring requirements for the discharge of treated effluent from outfall serial number 001.
6. The Lamprey River is designated as the primary drinking water source for the downstream Town of Durham, NH and the University of New Hampshire, located in

Durham, NH. The drinking water intake pipe is located 12 miles downstream from the WWTF Outfall 001.

7. On June 9, 2016, EPA issued an Administrative Order (“2016 Order”) to the Town requiring the development and implementation of a biological nutrient removal plan.¹ The Town was proceeding with the work under the 2016 Order in two phases.
8. In July 2019, the Town completed all upgrades under Phase 1 at the WWTF. Upgrades included replacement of wastewater screening equipment and installation of new septage receiving equipment.
9. In February 2021, the Town commenced the construction of upgrades under Phase 2 at the WWTF. Upgrades included replacement of a pump station and membrane bioreactor (MBR) filtration system.
10. On October 24, 2021, the MBR system had a major failure. Incoming wastewater was diverted to on-site lagoons for storage.
11. On December 17, 2021, through March 27, 2022, the on-site storage lagoons reached capacity, and the Town intentionally diverted part of its waste streams from a portion of the treatment facility, discharging a blended effluent to the Lamprey River. This is considered a “Bypass” under Part II.B.4.a.(1) of the Permit.
12. Blended wastewater from the WWTF is composed of a combination of fully treated effluent and a disinfected primary treated effluent.
13. On September 12, 2022, and again on January 11, 2023, NHDES issued letters to the Town imposing a moratorium on new sewer connections and septage acceptance.
14. From at least December 2021 through March 2022, and from December 2022 to the present, the Town has on occasions, bypassed its membrane filtration system at the WWTF, discharging a blended effluent into the Lamprey River.
15. On December 13, 2022, and as revised on December 19, 2022, the Town submitted to NHDES a WWTF Phase 2 Short-Term Improvement Corrective Action Plan (CAP). The purpose of the CAP is to address ongoing issues at the WWTF, focusing on issues related to operation of the membrane filtration system installed in 2021.

¹ The 2016 Order addressed violations of NPDES Permit No. NH0100692 which was the prior individual NPDES permit under which the Town operated the WWTP. Because the Town now operates the WWTP under NPDES Permit, No. NHG580012, the 2016 Order is no longer in effect. The Town will address compliance issues related to nutrients in its long-term corrective action plan, described below.

16. Bypass is prohibited under Part II.B.4.d of the NPDES Permit.
17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, *inter alia*, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
18. Because the bypass events described above are not in compliance with the terms and conditions of the Town's Permit, The Town's discharges of pollutants from the WWTF to the Lamprey River have occurred in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, it is hereby ordered that:

Wastewater Treatment Upgrades

1. By May 31, 2023, the Town shall complete the installation of the micro-screen replacement at the WWTF.
2. By May 31, 2023, the Town shall complete the flat plate membrane repair at two of the membrane trains at the WWTF.
3. By May 31, 2023, the Town shall provide a plan to EPA and NHDES for review for providing the public with notice whenever a bypass is occurring at the WWTF. Such a plan may include, but is not limited to, posting such notices on the Town's website and/or providing email alerts to subscribers who sign up to receive such notifications. Upon submission, the Town shall implement such plan subject to any conditions provided by EPA or NHDES.
4. By September 30, 2023, the Town shall implement and maintain an Emergency Peak Flow Storage System (EPFSS) at the WWTF.
5. By October 31, 2023, the Town shall put one or more hollow-fiber membranes into service at the WWTF.
6. By October 31, 2023, the Town shall provide to EPA and NHDES an analysis showing alternative options, including the costs of such actions, if items 1-5 above are not able to achieve consistent treatment of all influent flows.

7. By November 30, 2023, the Town shall construct a permanent weatherproof heated enclosure over the membrane crane rail lifting system. The enclosure will be a working space to remove and service the membranes during the cold weather, allowing the Town to provide maintenance all-year round.
8. By December 31, 2023, the Town shall remove all sludge from Lagoon 1 and Lagoon 2 at the WWTF site.
9. By June 30, 2024, the Town shall submit to EPA and NHDES for review a long-term corrective action plan. The action plan shall describe the actions, including any anticipated projects at the WWTF, that the Town plans on taking in order to comply with its NPDES permit and a schedule for completing such actions. Upon submission, the Town shall implement such plan subject to any conditions provided by EPA or NHDES.
10. By December 31, 2026, the Town shall meet all permit conditions.
11. By June 30, 2028, the Town shall permanently close Lagoon 1 and Lagoon 2 at the WWTF site.
12. Upon the effective date of this Order, the Town must continue to implement and comply with all requirements in the Emergency Bypass Standard Operation Procedure (SOP), dated December 27, 2022, submitted to NHDES, as a safety precaution.
13. Upon the effective date of this Order, the Town shall continue, when necessary, the operation of its emergency bypass treatment system (EBTS), which shall provide effluent suspended solids reduction, chlorine disinfection and dechlorination, at a minimum.
14. Upon the effective date of this Order, the Town shall perform, as needed, chlorine and citric acid backwash to all flat membrane trains.
15. Upon the effective date of this Order, each fall and spring, at a minimum, the Town shall perform manual cleaning and chemical recovery clean on all membrane trains.

Fats, Oil and Grease (FOG) Program

16. By August 31, 2023, the Town shall provide a comprehensive list to EPA and NHDES of all entities that may contribute FOG to Epping's wastewater collection system.
17. By November 30, 2023, the Town shall develop and implement a preventative maintenance and monitoring program for the collection system with particular focus on a

FOG Program. The FOG program shall include routine documented inspections of all entities identified in list above as well as educational public outreach.

Staffing

18. By July 31, 2023, the Town shall comply with New Hampshire Code of Administrative Rule Env-Wq 304.29 (b), by having a qualified OIRC (Operator in Responsible Charge) and a Back-up OIRC employed by the Town.
19. By August 31, 2023, the Town shall conduct a staffing evaluation for the operation and maintenance of the wastewater treatment facility, and a staffing evaluation for the operation and maintenance of the wastewater collection system (pipe, pump stations and FOG program). The Town shall follow the standards described in the NEIWPCCC Staffing Guide (or similar) in performing the staffing evaluation. Upon completion, provide a copy of this staffing evaluation to EPA and NHDES.
20. By August 31, 2023, the Town shall provide to EPA and NHDES an organizational chart depicting Epping's current WWTF and Collection System staffing positions as well as proposed new staffing positions per the outcome of the staffing evaluation. Provide job descriptions for each position.
21. By February 29, 2024, the Town shall hire additional staff as necessary to meet the staffing levels outlined in the staffing evaluation.
22. The Permittee shall comply with all other conditions specified in the Permit not covered in Part IV of this Order.
23. The schedules described in Part IV of this Order shall be incorporated and enforceable hereunder, or as amended by EPA.
24. All work pursuant to this Order shall be performed using sound engineering practices to ensure that construction, management, operation, and maintenance of the Town's WWTF, complies with the CWA.

Reporting Requirements

25. Beginning with the quarter ending June 30, 2023, the Town shall submit quarterly progress reports on the Town's progress in implementing the provisions of Part IV of this Order. The reports shall be submitted with 15 days of the end of each quarter (i.e., by

July 15th (covering April-June), Oct. 15th (covering July-Sept.), Jan. 15th (covering Oct.-Dec.), and April 15th (covering Jan.-March). Each progress report submitted pursuant to this paragraph shall: a) describe activities undertaken during the reporting period directed at achieving compliance with this Order; b) identify all activities, plans, reports, and other deliverables required by this Order that have been completed during the reporting period; and c) identify any anticipated or potential areas of noncompliance with this Order. Note that these quarterly reports are in addition to the specific Notifications required by Part V of this Order.

V. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, the Town shall submit to EPA and NHDES a written notice of compliance or noncompliance with such action within seven (7) days following the applicable deadline; however, written notice of compliance is not necessary if the action required by the Order includes submission of a document, report, or other written material, and the Town has timely submitted such document, report, or written material to EPA and NHDES.
2. If noncompliance is reported, notification should include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the Town to comply with the required action.
 - c. A description of any factors that explain or mitigate the noncompliance; and
 - d. The date by which the Town will perform the required action.²
3. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting all required documents or providing EPA with a written report indicating that the required action has been achieved. Submissions required by this Order shall be in writing and sent via email to the addresses below. EPA or NHDES may request that some items, such as design reports, to be sent in hard copy as well to the following addresses:

² Note that this is not an extension to the original deadline.

U.S. Environmental Protection Agency
Region 1, New England
Enforcement and Compliance Assurance Division
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Attn: Solanch Pastrana-Del Valle (Mail Drop 4-MO)
Pastrana-del-valle.solanch@epa.gov

and

New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095
Attn: Teresa Ptak
Teresa.b.ptak@des.nh.gov

VI. GENERAL PROVISIONS

1. This Order does not constitute a waiver or a modification of the terms and conditions of the Town's NPDES Permit. The Town's NPDES Permit remains in full force and effect.
2. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.
3. The Town may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
4. This Order shall become effective upon receipt by the Town.

May 11, 2023
Date



James Chow, Acting Director
Enforcement and Compliance Assurance Division
EPA Region 1