

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Town of Groton

Enforcement Document Number:

ACO-CE-20-5D00008483

Issuing Bureau: BWR

Issuing Region/Office: CERO

Issuing Program: DWP

Primary Program Cited: DWP

Program ID # 2115000

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 8 New Bond Street, Worcester, MA 01606.

2. Town of Groton ("Respondent") is a municipality with its principal offices located at 173 Main Street, Groton, MA 01450. Respondent's mailing address for purposes of this Consent Order is 173 Main Street, Groton, MA 01450.

II. STATEMENT OF FACTS AND LAW

3. MassDEP has primary enforcement responsibility for the requirements of the Federal Safe Drinking Water Act, 42 U.S.C. §300f et seq. and the regulations promulgated there under. MassDEP implements and enforces statutes and regulations of the Commonwealth of Massachusetts for the protection of the public drinking water supply, including, without limitation, M.G.L. c. 111, §5G and §160 and the Drinking Water Regulations at 310 CMR 22.00; the Cross Connections, Distribution System Protection Regulations at 310 CMR 22.22; and the Underground Injection Control Regulations at 310 CMR 27.00. MassDEP, pursuant to M.G.L. c. 111, §160, may issue such orders as it deems necessary to ensure the delivery of fit and pure drinking water by public water systems to all consumers. MassDEP, pursuant to M.G.L. c. 111, §5G, may require by order the provision and operation of such treatment facilities as it deems necessary to ensure the delivery of a safe water supply to all consumers.

MassDEP's Drinking Water Regulations at 310 CMR 22.02 define a public water system as a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an

average of at least 25 individuals daily at least 60 days of the year. 310 CMR 22.02 also defines a supplier of water as “any person who owns or operates a public water system.”

MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent, a supplier of water, owns and operates a Community Public Water System (“PWS”), referred to as the Groton Water Department (“GWD”) serving a population of 5,529 persons per day from a three gravel packed wells (Baddacook Pond Well - “Well 02G”, Whitney Pond Well #1 - “Well 03G” and Whitney Pond Well #2 - “Well 04G”) under identification number PWS ID# 2115000.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

- A. In October 2013, MassDEP’s Office of Research and Standards established health advisory guidelines for manganese in Massachusetts drinking waters (ORSG). The ORSG includes a lifetime health advisory value of 0.3 mg/L to protect against concerns of potential neurological effects and a 10-day health advisory of 1 mg/L for acute exposure. MassDEP recommends that infants up to 1 year of age should not be given water with manganese concentrations greater than 0.3 mg/L for more than a total of 10 days in a year, nor should the water be used to make formula for more than a total of 10 days in a year.
- B. On February 25, 2019, MassDEP issued a letter to Respondent informing it of manganese levels in Respondent’s water above the health advisory limit of 0.3 mg/l and requiring a public notice and submittal of a corrective action plan (CAP) by September 1, 2019 and a final plan by February 1, 2020.
- C. On August 15, 2019, Respondent submitted a proposed manganese compliance plan and requested a technical assistance meeting with MassDEP.
- D. On September 25, 2019, MassDEP met with Respondent to discuss the submitted compliance plan.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations

set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

- A. On or before March 31, 2020, submit to MassDEP a BRP WS21 Approval to Conduct Pilot Study permit application to evaluate treatment for manganese at Well-03G and Well-04G ("the Whitney Wells").
- B. On or before December 31, 2020, submit to MassDEP a BRP WS22 Approval of Pilot Study permit application with conceptual design for a water treatment plant or plant improvements to address the elevated levels of manganese at the Whitney Wells.
- C. On or before September 30, 2021, submit to MassDEP a BRP WS25 Modification of Treatment Facility permit application to make modifications to the Baddacook Water Treatment Plant ("WTP") or a BRP W23C Approval to Construct a Water Treatment Facility application to address the elevated levels of manganese at the Whitney Wells.
- D. On or before March 31, 2023, submit confirmation to MassDEP that construction of the MassDEP approved water treatment plant or plant improvements at the has commenced.
- E. On or before December 31, 2024, submit confirmation to MassDEP that the modified Baddacook WTP or new treatment plant to address elevated levels of for manganese at the Whitney Wells is complete and in operation.
- F. Until manganese levels are below the ORSG at all entry points to the distribution system, Respondent shall continue to provide public notice in accordance with 310 CMR 22.16 and 22.16A, about the elevated levels of manganese consumers and new billing units.

9. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:

Robert Bostwick, Drinking Water Section Chief
MassDEP
8 New Bond Street
Worcester, MA 01606

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. Force Majeure - General

- A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.
- D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that

Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

12. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

13. This Consent Order may be modified only by written agreement of the parties hereto.

14. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. If Respondent violates, any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

21. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the PWS for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

22. The undersigned certify that they are full authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

23. This Consent Order shall become effective on the date that it is executed by MassDEP.

SPECIAL INSTRUCTIONS:

Your two **signed copies of the Administrative Consent Orders (ACO)** must be delivered, for execution (signature) by MassDEP, to the following address:

Robert A. Bostwick, Drinking Water Section Chief
MassDEP
8 New Bond Street
Worcester, Massachusetts 01606

MassDEP will return one signed copy of the ACO to you after MassDEP has signed, provided you have followed the above instructions.

Please call Robert Bostwick at (508) 849-4036 if you have questions.

Consented To:

TOWN OF GROTON

By: 

Mark Haddad, Town Manager
173 Main Street
Groton, MA 01450

Federal Employer Identification No.: 046001164

Date: 2-18-20

Issued By:

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Mary Jude Pigsley, Regional Director
Central Regional Office
8 New Bond Street
Worcester, MA 01606

Date: 2/4/2020