

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
BOSTON REGION

In the Matter of:

PUBLIC HEARING:

RE: NPDES DISCHARGE PERMIT FOR
TOWN OF SPENCER WASTEWATER TREATMENT PLANT
SPENCER, MASSACHUSETTS
NPDES PERMIT NO. MA0100919

Richard Sugden Library
8 Pleasant Street
Spencer, Massachusetts

Monday
March 26, 2018

The above entitled matter came on for hearing,
pursuant to Notice at 6:04 p.m.

BEFORE:

DAVID WEBSTER, Chief, Water Permits Branch
ROBIN JOHNSON, Permit Writer
U.S. Environmental Protection Agency
New England Region I
5 Post Office Square, Suite 100
Boston, MA 02210

SUZANNAH KING
Massachusetts Department of Environmental Protection

CONTENTS

SPEAKERS	PAGE
David Webster	3
Suzannah King	8
 PUBLIC	
Kevin Olson	10
Meg Noyes	15
Carl Nielsen	19
Jaime Vander Salm	21
Randy Weiss	34
Larry Dufault	36

P R O C E E D I N G S

(6:04 p.m.)

MR. WEBSTER: Good evening, ladies and gentlemen.

My name is David Webster. I'm the Chief of the Water Permits Branch at the Region 1 Office of the United States Environmental Protection Agency, also known as EPA.

Co-chairing this public hearing with me is Suzannah King from Massachusetts Department of Environmental Protection, commonly referred to as Mass DEP. Also joining me here tonight is Robin Johnson, EPA's Permit Writer for this permit which is the subject of the hearing.

This hearing, concerning the issuance of the National Pollutant Discharge Elimination System or NPDES or sometimes called "Nip-tees" permit for the Spencer Wastewater Treatment Plant in Spencer, Massachusetts shall come to order.

This permit is for the Town of Spencer Wastewater Treatment Plant, or the Spencer Wastewater Treatment Plant operated by the Town of Spencer's Sewer Commission, or we'll just say Spencer. It is permit number MA0100919.

This permit for the Spencer Wastewater Treatment Plant will be issued to Spencer in final form upon consideration of comments received during the public comment period, including those received during this public hearing.

In Massachusetts, EPA and Mass DEP typically issue

1 permits jointly. Although the permit is a single document
2 signed by both agencies, legally, each agency issues the
3 permit under separate federal and state authority, namely,
4 the Federal Clean Water Act's National Pollutant Discharge
5 Elimination System or NPDES, and the Massachusetts Clean
6 Water Act's Surface Water Discharge Permit Program.

7 The NPDES program issues permits to facilities
8 that discharge pollutants into waters of the United States.
9 The permit writer develops effluent limits as well as
10 monitoring and reporting requirements based on information
11 from the facility, federal regulations, state water quality
12 standards, technical guidance published by EPA and the
13 state, state and federal policy and other information.

14 More information on the NPDES program is available
15 in the NPDES program summary. There's a handout entitled
16 Water Permitting 101. And there are copies up at the table.
17 Oh, we're all out. I don't need it, I hope.

18 Along with this document, there is a web address
19 where you can find Spencer Wastewater Treatment Plant Draft
20 Permit and additional information on the NPDES program.

21 EPA and Mass DEP released the Draft Permit for
22 public notice for this facility on February 26, 2018. The
23 public comment period began on February 26, 2018 and is
24 scheduled to end on March 28, 2018. The legal notice for
25 this public comment period was available on EPA's website on

1 February 23, 2018 and in the Worcester Telegram and Gazette
2 newspaper on February 26, 2018.

3 So, since February 23, 2018, the Draft Permit Fact
4 Sheet and supporting documents have been available for
5 interested parties to review and comment on. The Fact Sheet
6 describes the type of facility, the type and quantity of
7 waste, a brief summary of the basic basis for the Draft
8 Permit conditions and significant factual legal and policy
9 questions considered in preparing the Draft Permit. The
10 Draft Permit and Fact Sheet, including the attachments, also
11 were made available on EPA's website and they still are.

12 You have probably received or have seen copies of
13 the Draft Permit and Fact Sheet. But, in case you haven't,
14 some are available here at the hearing that you might want
15 to look at, or on the EPA website.

16 Comments on the Draft Permit can be made by
17 sending written comments to EPA and/or by making comments
18 during this hearing.

19 Tonight's hearing is an informal non-adversarial
20 hearing providing interested parties with the opportunity to
21 make oral comments and/or to submit written comments on the
22 proposed permit. There is no cross examination of either
23 the panel or the commenters. Any questions directed to the
24 commenters from the panel members will be for clarification
25 purposes only.

1 This public hearing is being recorded. The
2 transcription will be part of the official administrative
3 record for this permit. However, in order to ensure the
4 record's accuracy, we highly recommend that you submit
5 written comments in addition to any comments you make
6 tonight.

7 As previously mentioned, the public comment period
8 will close at midnight on March 28, 2018. Following the
9 close of the public comment period, EPA and Mass DEP will
10 review and consider all the comments received during the
11 public comment period both in writing and at tonight's
12 public hearing.

13 EPA and Mass DEP will prepare a document known as
14 a Response to Comments that will describe and address the
15 significant issues raised during the comment period and what
16 provisions, if any, of the Draft Permit were changed and the
17 reasons for the changes.

18 The Response to Comments will accompany the Final
19 Permit for the Spencer Wastewater Treatment Plant when the
20 Final Permit is issued. Notice of the availability of both
21 the Response to Comments and the Final Permit will be mailed
22 or e-mailed to anyone who commented on the Draft Permit.

23 Anyone who wishes to contest the Final Permit must
24 file a petition for review or appeal with the Environmental
25 Appeals Board, also known as the EAB. A couple of important

1 things to remember if you're considering appealing the Final
2 Permit. First, a petition for review or appeal must be
3 received by the EAB within 30 days of the date that the
4 Final Permit is issued. More information on how exactly to
5 calculate this period will be available with the Final
6 Permit.

7 Second, only persons who filed comments on the
8 Draft Permit during the public comment period, or who
9 provided comments during the public hearing, may petition
10 the EAB for review of the Final Permit conditions.

11 Third, any person seeking a review of the permit
12 decision must raise all reasonable ascertainable issues and
13 submit all reasonable available arguments supporting their
14 position during the public comment period, including during
15 the public hearing.

16 Issues or arguments that were not raised will not
17 be considered by the EAB on appeal. There is one exception
18 to the above. Any person who failed to file comments or
19 failed to participate in the public hearing may petition the
20 EAB only to the extent of a change from the Draft to the
21 Final Permit. More information on the appeals process can
22 be found at EPA's website and at the time of the Final
23 Permit decision.

24 So, my co-chair, Suzannah King, from Mass DEP,
25 also has some opening remarks.

1 MS. KING: Good evening. My name is Suzannah
2 King. I represent the Massachusetts Department of
3 Environmental Protection.

4 This is a joint public hearing being held under
5 the provisions of state as well as federal laws and
6 regulations.

7 The Massachusetts Clean Water Act, General Laws
8 Chapter 21, Sections 26 to 43 and the Code of Massachusetts
9 Regulations 314 CMR 3 prohibit the discharge of pollutants
10 into the waters of the commonwealth unless authorized by a
11 permit issued by the Department of Environmental Protection.

12 The Department and the US Environmental Protection
13 Agency, New England Region 1, have entered into an agreement
14 to cooperatively process applications and jointly issue
15 surface water discharge permits. The permits issued under
16 this program are developed to conform to both state and
17 federal water pollution control laws and regulations.

18 Each agency has the independent right to enforce
19 the terms and conditions of the permit. Thus, the
20 Department will also fully consider all written and oral
21 comments received at this hearing in addition to written
22 comments already received by the agencies.

23 The EPA has requested that the Department certify
24 the Draft NPDES Permit for the Spencer Wastewater Treatment
25 Plant in accordance with the provisions of Section 401(a)(1)

1 of the Federal Clean Water Act and pursuant to 40 CFR
2 Section 124.55.

3 No final decision concerning certification will be
4 made until all comments received have been reviewed. The
5 permit can be certified in its current form or with
6 specified state certification requirements.

7 The Department of Environmental Protection
8 welcomes the opportunity for this hearing to gather any
9 additional information that will assist the Department in
10 making decisions concerning the Final NPDES Discharge Permit
11 for the Spencer Wastewater Treatment Plant.

12 MR. WEBSTER: Thank you.

13 So, to begin hearing your comments, I'm going to
14 first ask a couple of representatives from the Town of
15 Spencer as the permittee, if they wish. Then, I usually go
16 to any federal, state or local officials. There is one
17 office from the Spencer Sewer Commission that I'll give the
18 opportunity. And then, I'll use the cards and call on
19 people as they registered on here to comment. And I will
20 ask at the end if there's anybody that didn't get a chance
21 to do that to come to the podium.

22 If you do speak, I'm going to let everybody else
23 have a chance to speak and see what time it is by the end if
24 there was something else that you wanted to say at the end.
25 It's a fairly good size group. I think we won't have a

1 problem. You know, try to keep your comments to the order
2 of five minutes or so and I think we'll do pretty well.
3 But, let me know. And if I ask you to stop and you've not
4 finished, I'll ask you to defer the remainder of your
5 comments until each person has had an opportunity to
6 comment. Then, if there's time at the end, we'll give you a
7 short opportunity to finish up your comments.

8 Again, if you have written statements, you can
9 read it if you can do it in five minutes. But, I'd ask you
10 to summarize the statement if it goes on and on and on. And
11 again, I'd encourage you to do written comments. It's
12 easier for us to deal with them and nothing gets lost in the
13 translation. Although, we have an excellent stenographer
14 here tonight.

15 So, again, thank you for coming to this. And
16 we'll start off with Kevin Olson from Wright Pierce
17 representing the permittee.

18 MR. OLSON: Do you want people to come up to the
19 podium?

20 MR. WEBSTER: Oh, yes. I'm sorry. When you get a
21 chance, come up to the podium so you're addressing the
22 audience and us. Thank you very much.

23 MR. OLSON: Thank you everybody. Good to be here
24 tonight. Kevin Olson, Senior Project Manager with Wright
25 Pierce. We are a consulting engineer working with the Town.

1 We've been working with the Town for several decades I think
2 actually. So, we continue to work with them now as part of
3 the permitting review process.

4 So, I did get a chance to speak at the meeting
5 before. So, I'll shorten up a couple of things that I did
6 want to say. But, I just wanted to say first and foremost,
7 ourselves and the Town have appreciated the work that EPA
8 and DEP have done with us to date to get to this point of
9 the Draft Permit. So, it's good to see that we're actually
10 at this point right now.

11 EPA's aware that the Town will be submitting its
12 written comments tomorrow. Robin is aware of that. And we
13 actually will make some comment on the dates that are
14 proposed in the Draft Permit as well and some of the interim
15 dates in particular. So, those are forthcoming.

16 A couple of big picture comments that I'd like to
17 make on behalf of the Town. The Town has done a lot of work
18 over the last several decades, like I mentioned, at the
19 treatment plant as well as in the collection system. And
20 they've tried to really be good stewards for the
21 environment, but also do the best job they can for the sewer
22 users. So, this is really just kind of a next step in that
23 process.

24 The NPDES permit, I think, everybody knows is
25 really going to drive some of that work. There are some

1 needs at the plant now. But, with the permit itself, we
2 talked about some of those metrics earlier.

3 Phosphorous is one of them. And I did mention
4 there is a handout. Again, I'll mention it now that we're
5 on the record. If you don't have it, I think, there might
6 still be some copies there. So, feel free to take a look at
7 that. I'll talk a little bit more about that in a minute.

8 The Town is doing some other things right now as
9 well as reviewing the Draft Permit. They're working on its
10 comprehensive wastewater management plan right now. And
11 that will help really set the road map for the next 20
12 years. What are they going to do with their collection
13 system? What are they going to do with their plant? So,
14 everything is going to get wrapped into that, into one nice
15 document.

16 And then, right at the very end of the public
17 meeting, I didn't get a chance to say that, when that is
18 complete, there will be a public hearing and meeting as a
19 requirement of that. So, I just wanted to make that comment
20 to you that there will be an opportunity to actually comment
21 on that as well.

22 The CWP is in three phases. The first phase is
23 more or less complete at this point and moving into phase 2.
24 Our intended schedule is to have phase 3, the final phase,
25 completed in October of this year. So, right around that

1 time would be the likely time we'd schedule the public
2 meeting and hearing on that.

3 The Town is also working on its II control plan
4 right now, infiltration and inflow, II. It's DEP required.
5 They have a time extension to complete that. All municipal
6 sewer communities were supposed to have that completed by
7 the end of last year if you didn't have a time extension.
8 The Town does, so that will get completed by the end of this
9 year.

10 Really, I'm bringing that up more to tell you
11 that, after you do the infiltration and inflow program,
12 they'll move into the next phase, which is sewer system
13 evaluation survey, where you try to further identify some
14 issues with it in collection system. And more salient to
15 tonight's point is ultimately move into some sewer rehab as
16 needed to be able to reduce infiltration and inflow, which
17 would have a positive effect on the collection system as
18 well as the plant in terms of a flow standpoint. So, again,
19 the Town is doing a lot of really good work.

20 To the handout, and my last point that I'll make,
21 again, take a look at this. In black, the process flow
22 diagram is the existing treatment facility. And then, in
23 red and in green, lays out a number of things. Again, we
24 don't have all of the details for you tonight. Give us a
25 little bit more time and we'll have a better feel for how

1 the Town plans to get permit compliant.

2 But, there are a number of things that have
3 already been talked about tonight, phosphorous being one of
4 them. It's likely that they're going to add on a tertiary
5 phosphorous system to get from that seasonal point 2 down to
6 that seasonal point 1.

7 A couple of other things, the wetland basins that
8 were mentioned earlier we are looking at, and the Town is
9 considering, eliminating those basins. You know, we talked
10 about, you know, the fact that there's some flow that's
11 being lost there. We are looking at relocating the outfall
12 from the Cranberry to the Seven Mile River. That's also
13 part of what we're looking at right now.

14 There's some other items in here that we're
15 looking at. Total nitrogen, it's a report only for this
16 permit cycle. So, there is no numerical limit. We know
17 that, but we, as the Town's engineer, need to take a look
18 ahead and say could that be coming in a future permit cycle.
19 So, we're going to look at that as well.

20 And as part of making upgrades to meet the current
21 pending permit here, you know, what about nitrogen in the
22 future. So, we're going to keep that future in mind.

23 A couple of other things I just wanted to leave
24 you guys with. In closing, the Town -- you know, there's a
25 lot of work to be done here. And there's a lot of

1 variables. I know that people might have their certain
2 opinions on when this should be completed. But, the Town is
3 aware that the end game for permit compliance as written in
4 the draft is the end of 2024.

5 So that is right now what the Town is looking at
6 as a potential treatment plant upgrade and being permit
7 compliant. But, again, the Town will comment on those
8 interim milestones as well.

9 So, I think, I've covered it. I don't want to get
10 the hook here. I wanted to stay within five. So,
11 hopefully, I did.

12 MR. WEBSTER: Thank you, Mr. Olson. That's great.
13 Thank you.

14 I'd next call on Frank White from Spencer
15 Wastewater Treatment Plant.

16 MR. WHITE: He spoke for me and everybody else.

17 MR. WEBSTER: Okay. I'd then call Larry DuFault.
18 Do you want to talk?

19 MR. DUFAULT: No. I think that Kevin covered it
20 pretty much.

21 MR. WEBSTER: Okay. Then, I'd move on to Meg
22 Noyes from the lake association.

23 MS. NOYES: Thank you. Hi. My name is Meg Noyes
24 and I'm from the Quabog and Quacumquasit Lake Association.
25 And I'm going to introduce the work of the organization.

1 Then, you'll hear about our water consulting firm, ESS.
2 They conducted testing of the waters downstream of the plant
3 for us. And finally, our legal issues by our lawyer, Jaime
4 Vander Salm.

5 Don R. Taft, resident of Brookfield, has worked
6 with me on this presentation and is a presenter of this
7 comment. He and I are members of the board for 12 years.
8 And we're a non profit representative organization of about
9 200 families in the watershed that have an interest in
10 seeing improvements in the Spencer Wastewater Treatment
11 Plant. This has been over 25 years.

12 I'd like to make it perfectly clear that we also
13 represent part of the towns of Sturbridge, East Brookfield
14 and Brookfield who have interest also in seeing
15 improvements. And they have written letters which I think
16 you've gotten. And you'll also probably hear other people
17 who want to express opinions, their own viewpoints.

18 We have concerns about the economic impact of the
19 wastewater treatment plant. And I'd like to thank DEP and
20 EPA for holding this required meeting and hearing.

21 Our mission is the protection of the environment,
22 waterways, streams, rivers, wetlands and lakes as suggested
23 by the 1972 Clean Water Act. We are concerned with the
24 economic and recreational impacts of the Spencer Wastewater
25 Treatment Plant on the lakes and streams, not to mention the

1 protection of East Brookfield and Brookfield's public water
2 source wells.

3 Quabog, North Pond and Quacumquasit, South Pond
4 are directly downstream from the wastewater treatment plant.
5 These bodies of waters are prime recreational water that are
6 prized for both their warm water and cold water fisheries.
7 The lakes also provide swimming, boating, kayaking, canoeing
8 and a general enjoyment of this treasured resource. They
9 also contain special flora and fauna, two different species
10 of bittern and the largest US concentration of the rare
11 kings bulrush.

12 There's deteriorating water quality and it has an
13 effect on the value of the land for water waste and the
14 individuals. And we're all collectively responsible. And
15 phosphorous is the biggest problem.

16 So, what has QQLA done to limit phosphorous in the
17 watershed. We helped with the implementation of the ban on
18 phosphates in dishwashing and washing machine detergents.
19 We have educated the public to limit the phosphorous in lawn
20 fertilizers. We've supported the Town's efforts in Title 5
21 septic system replacements. We've secured 319 grants to
22 deal with the runoff and contaminating infiltration of our
23 waterways. We provide trash services at both ponds, beaches
24 and boat ramps. We paid for fall and spring coverage of
25 boat ramps with porta potties. We hold spring clean up

1 dates. And we urge the preservation of shore trees and
2 vegetation.

3 And this has happened through steady fund-raising,
4 education and implementing costs and thousands of hours by
5 hundreds of volunteers.

6 Spencer Wastewater Treatment Plant is a large
7 point source discharge of contaminants, pollutants and high
8 nutrient load phosphorous. Annually, we spend \$12,500 to
9 deal with the growth of invasive aquatic plants. The number
10 is small compared to what needs to be dedicated each year
11 after year in order to fend off these plants. That figure
12 doesn't come close to what it might cost, in the millions,
13 to dredge North Pond or to provide an alum treatment, about
14 a half a million for South Pond.

15 In closing, I'd like to thank the DEP and the EPA
16 for listening to our suggestions. We applaud the complete
17 re-engineering of the plant that answers the entire problem
18 which we've documented. But, we want to please make the
19 process of the build up of the new plant happen in the most
20 expeditious time frame possible. Please allow for annual
21 public information and time for questions so we can follow
22 the timely progress of the treatment plant's building.

23 Please recognize the hard work of hundreds of
24 people and minimize the cumulative damage that's been done
25 to our lakes. Help us improve the quality of the treasured

1 lakes that benefit a whole community of users. Thank you.

2 MR. WEBSTER: Thank you very much.

3 I'd next call on Carl Nielsen from the lake
4 association.

5 MR. NIELSEN: Thank you very much. So, I'm a
6 certified lake manager. I've been working for over 20 years
7 with QQLA. And I've been working in lake management for
8 over 27 years.

9 My experience with QQLA goes back further than
10 that. I grew up on the lakes. I recall what they used to
11 look like before excessive phosphorous loading had occurred.

12 Phosphorous, as we've all talked about, is the
13 significant source of nutrient to the lake. It's the
14 critical one that causes the algae blooms. Those algae
15 blooms settle to the bottom of the lake each year and result
16 in internal recycling within the lake.

17 That internal recycling adds each year an
18 additional load to that pond. And over 20, 30 years, what's
19 happened is, the phosphorous has inched up. When I was a
20 kid, phosphorous in the lake was .015. Now, it's .2 in
21 South Pond. North Pond is .4 -- .04. Sorry. So what's
22 happened is, over time, that phosphorous has inched up and
23 now algae blooms are more common in South Pond. They happen
24 annually in North Pond.

25 QQLA has fought to combat those algae blooms with

1 treatments to keep the water swimmable each summer. And my
2 company, ESS, has worked to help them do that each year by
3 monitoring and implementing those programs.

4 Over nearly 30 years ago, QQLA put in or worked to
5 put in a gate between the two ponds. That gate was designed
6 to keep phosphorous out of South Pond which has a one a half
7 to two year flushing rate. That slow flushing rate means
8 that every time there's a big storm in the watershed and a
9 back flow of water, that water comes with nutrients that
10 flush into South Pond and add to that internal recycling
11 load.

12 And it takes two years for that water to flush
13 itself out. So, if you get a back flow every year, you're
14 going to just gain phosphorous over time. And that's what
15 been happening.

16 The North Pond has a very slow flushing rate,
17 about 30 days to 60 days. And that slow -- I mean, fast
18 flushing rate. Sorry. That fast flushing rate means that
19 the nutrients that come down from the Seven Mile River into
20 North Pond flush through the pond relatively quickly. When
21 we get into some of the discussions later, we're going to
22 have some very specific points that will relate to some of
23 these facts as to how we think the permit could be improved.
24 And Jaime is going to step up to the plate, I think, next
25 and try to run through a few of those suggestions.

1 That's all I have. Thank you.

2 MR. WEBSTER: Thank you very much.

3 James Vander Salm.

4 MR. VANDER SALM: Thank you. So, my name is Jaime
5 Vander Salm and I'm the attorney for QQLA. And we've
6 submitted written comments. And I'll just briefly go
7 through those, some of them.

8 But, before I do, I'm hoping -- I understand
9 there's no -- give and take here is not what this hearing
10 process is about. But, I certainly hope that EPA or DEP, if
11 there's something I'm saying that you disagree with, I hope
12 that you'll let me know.

13 So, we have seven -- QQLA submitted a total of
14 seven comments. The first of those comments, was that the
15 proposed new phosphorous limits must be lower to comply with
16 the facility's TMDL waste load allocation. So, the waste
17 load allocation, as it says in the fact sheet, the waste
18 load, the effluent limits must be consistent with the TMDL
19 waste load allocation. So, the waste load allocations are
20 .79 pounds per day and 1.19 pounds per day as we heard
21 before.

22 If you do the math, and this is one of these areas
23 where I hope that someone will correct me if I'm incorrect,
24 but I think, if you do the math, and you try to figure out
25 what effluent limit is necessary in order to ensure that the

1 daily poundage of phosphorous is under .79, for example, in
2 the summer, I think, if you do the math, as is done in my
3 comment, I think what you get is actually a .09 milligrams
4 per liter -- this is rounded off -- but, it's .09 for the
5 summer versus the .1. And you get a .13 as opposed to the
6 .2 for the winter.

7 So, you've got a difference in both. And you have
8 a difference of the actual -- the .2 that is proposed in the
9 Draft Permit for the winter is actually more than 50 percent
10 higher than I think the waste load allocation will allow.
11 That is to say, the 1.19 pounds per day will allow. If
12 you're at .2 milligrams per liter, you're going to be going
13 considerably over that 1.19, that waste load allocation.

14 So, I think, as a matter of law, and this is as
15 cited in the permit, this is 40 CFR, this is the federal
16 regulations, 40 CFR 122.4(d)(1)(7)(B). I think, as a matter
17 of law, those have to be lower. And I understand this is,
18 again, this is not a give and take. But, if there's
19 something I'm saying wrong, I would invite a give and take
20 on that point here, even though I understand there will be a
21 response to these comments on paper.

22 So that's the first comment. Again, the limits by
23 law should be no greater than .09 milligrams per liter for
24 the growing season, and no greater than .13 milligrams per
25 liter during the winter season.

1 The second comment is about the length of those
2 seasons. As, I think, everyone here knows, the summer
3 season, the growing season within this Spencer permit has
4 applied and does apply in the Draft Permit. That limit for
5 phosphorous applies for six months. That is to say from May
6 1st through October 31st.

7 And as I say in the comment, I think this is an
8 anomaly. I have cited 20 other towns in Massachusetts here
9 in this comment all of which have these adjusted seasonal
10 limits for phosphorous, in other words, it's different in
11 the winter season and the growing season. And they all
12 employ a seven month growing season. And I don't know if
13 there's a reason for that.

14 I didn't find an exception. In my own review of
15 the permits online, I didn't find an exception to this seven
16 month growing season, five month winter season to the break
17 down of the year into those two periods for phosphorous
18 purposes. So, I think, at the very least, Spencer is
19 exceptional in this respect in having the lower limit apply
20 for six as opposed to seven months. And I would ask, on
21 behalf of my client, that this permit reflect the norm,
22 which is to divide the year into a seven and a five month
23 period.

24 This is not just the norm. It also is smart
25 because April, the month of April, again, which is now in

1 the Spencer permit, the higher phosphorous limit applies for
2 the month of April. The growing season is -- well, it's
3 becoming longer. I think, what you see in these other
4 permits actually reflects the true growing season or the
5 increasingly true growing season which begins earlier. So,
6 you should have the lower limit apply earlier.

7 You have climate change impacts, such as higher
8 temperatures, higher water temperatures, accelerated ice
9 off. You have things growing sooner. So, it makes sense
10 for the permit here in Spencer to be aligned with what I
11 believe is the norm. And I think the norm is actually an
12 understatement. I think, almost every permit, I didn't find
13 an exception, almost every permit uses this seven month/five
14 month break down.

15 The third comment that we have submitted has to do
16 with the length of the time line. And we were looking in
17 the fact sheet for an explanation as to -- we, QQLA, was
18 looking in the fact sheet for an explanation as to why these
19 periods of time were necessary. And what we see is, there's
20 a mention of -- there's an application for financial
21 assistance and that takes a while. And also, this is going
22 to be costly to the members, to the persons who pay sewer
23 fees in town.

24 I think, what makes it for QQLA earlier is very
25 important to bear in mind here. There is economic cost

1 being imposed down the river. And to the degree that
2 financial considerations are dictating a longer schedule,
3 and the fact sheet more or less says that's what's happening
4 here, I think, the agency should weigh that against the
5 financial cost to those people downstream. And there
6 doesn't seem to have been any -- well, there's no analysis
7 in the fact sheet as to the cost that this is imposing on
8 persons who live on -- I think, it's not just the people who
9 live on these ponds, it's the people who recreate in these
10 ponds. It's a huge group of people who suffer economic loss
11 to the degree that their lives and their enjoyment of these
12 resources are diminished. So, I think that's important to
13 take into account.

14 In any event, I don't think it is reasonable, even
15 if all of the financial cost of this were being borne by the
16 tax payer or by the sewer rate payer in Spencer, you still
17 have a situation here where I believe it's safe to say, as
18 we have in the comments, that the town of Spencer has been
19 an extraordinary beneficiary of -- they have been treated
20 quite charitably by the agencies thus far. And I think
21 that's true in several respects.

22 It's true because, for example, this permit is
23 being -- we are six years beyond the point where this permit
24 -- I understand this is normal, but still, they had an extra
25 six years before they had to come to this point in time when

1 they were going to be called upon to spend money on these
2 upgrades.

3 It is also very important to keep in mind that, as
4 things stand, the permit effectively licenses the Town, and
5 has for the last 11 years, licenses the Town to exceed its
6 waste load allocation when you do, in fact, take into
7 consideration the water, more than half of the water that
8 comes in that is being lost through the wetland beds. What
9 the current permit does with the current limits in place,
10 the .2, .3, it ignores that water, and thereby, has given
11 the Town a huge break in ignoring a large percentage of the
12 pollution that is coming from the facility.

13 And I do think it's worth remembering this
14 discharge to groundwater is actually illegal. I don't think
15 that's in question. It violations Massachusetts regulations
16 at 314 CMR. They need a groundwater discharge permit to do
17 this. They've been violating this for decades. For
18 decades. And there's been no price to pay.

19 I believe this also violates federal law.
20 Increasingly, the case law says that you do, in fact, need a
21 federal clean water discharge permit if you discharge to
22 groundwater and it then comes out into surface waters, which
23 is what we -- I think we have here with respect to this
24 water coming out into Cranberry River and/or Seven Mile
25 river.

1 The point is, the Town has received very generous
2 treatment. Its violations of law, both federal and state,
3 certainly state, have been tolerated. This permit is six
4 years late in coming. This permit has licensed them to
5 exceed the waste load allocation that is established in the
6 TMDL report.

7 For all of those reasons, the agency should say
8 no, we're going to insist that they move diligently and
9 expeditiously in their design and execution of these
10 upgrades.

11 Number four, and I know I'm a bit over my five
12 minutes here, so I'll be brief. The fourth comment, I
13 think, in several respects, the permit time line for the
14 phosphorous limits is problematic in that it is not
15 sufficiently specific, specifically, in three respects.
16 Part 1(b)(2)(B) states that the Town shall, "complete a
17 conceptual design to meet the total phosphorous limit by
18 December 31, 2018". And QQLA requests that it be specified
19 that they complete a 25 percent conceptual design to meet
20 the total phosphorous limit, that the actual kind of
21 conceptual design, the degree of design, that that be
22 specified. I think, otherwise, you're going to have a
23 disagreement which will be bad for all parties and all
24 agencies later on as to what that means.

25 The same thing for part 1(b)(2)(C) of the

1 phosphorous time line which says that, no later than July
2 31, 2020, the Town shall, "complete design plans and
3 specifications for necessary upgrades." QQLA requests that
4 this be amended so that it reads, complete design plans and
5 specifications for necessary upgrades and obtain all permits
6 required to perform such upgrades. There's nothing in the
7 time line about acquiring permits. And I think that is
8 going -- that lack of specificity is problematic and will
9 cause disagreement later on as well.

10 Thirdly, I'm not sure if this is -- I'm not sure
11 if this was an omission or not on DEP's part, on the
12 agency's part, but part 1(b)(2)(E) of the permit, of the
13 Draft Permit, says, "the Town shall attain compliance with
14 the final effluent limits for phosphorous by December 31,
15 2024." It doesn't say that they must complete construction
16 of necessary upgrades including removal of the constructed
17 wetlands which is what QQLA would suggest.

18 The fact sheet does say that it is -- as has been
19 said here today, I think, by Robin or one of the speakers,
20 it is understood that upgrades to the facility will include
21 removal of the constructed wetlands. And I don't know what
22 that understanding is worth in terms of its legal effect.
23 If it just exists in the fact sheet, I don't think it's
24 worth much in terms of binding them legally. And I
25 understand the premise here tonight seems to have been that

1 that is not, in fact, binding, that this is potential, and
2 that that's not being required.

3 Certainly, if that is something that the agencies
4 want to require, it should be there right there in that time
5 line in the permit as opposed to just a suggestion in the
6 fact sheet. QQLA would certainly urge the agencies to put
7 that requirement that they actually, by that date, remove
8 the constructed wetlands, that that be put in the actual
9 permit. Because we don't really know what's happened. As
10 has been discussed tonight, we don't really know what's
11 happening with the water that's getting through there in
12 terms of its phosphorous content or anything else.

13 And it's illegal. It's illegal. And that's not,
14 I think, arguable. It certainly violates state law for them
15 to be discharging to groundwater without a permit. So,
16 those are three suggestions as to greater specificity in the
17 time line.

18 The last three requests are comments that QQLA
19 made that have to do with, when looking at this permit, and
20 I know it resembles a lot of these permits, but one is
21 struck by the lack of provisions that are aimed at ensuring
22 that the Town will comply. So, I think, it's important, and
23 this was alluded to by one of the speakers earlier, I think,
24 it's extremely important that there's an annual report, for
25 example, that is -- it says that each year, by December

1 31st, the Town shall submit an annual report summarizing
2 what it has done for the previous year to EPA and Mass DEP.
3 I think, that language is very weak, summarized. So, at the
4 very least, I would hope that the actual time line would
5 insist on a detailed as opposed to a summary report, and
6 actually set forth the types of detail that are going to be
7 required.

8 This sort of transparency, I think, will be good
9 for everyone. It will put greater pressure on the Town to
10 actually act. It will enable concerned citizens and the
11 agencies to know exactly what's happening if language such
12 as the following is included; the annual report shall
13 include -- this is just a proposal, but I would hope that
14 something approximating this would be included in the permit
15 -- the annual report shall include, without limitation, a
16 registered professional engineer's detailed description of
17 all planning design and construction activities performed or
18 scheduled to be performed during the past or subsequent
19 calendar year, dates during which such activities have been
20 performed or are scheduled to be performed shall be
21 specified. Any problems or delays encountered or
22 anticipated in the performance of such activities shall be
23 explained in detail. The annual report shall be made
24 available to the public through the Town's website
25 simultaneously with its submission to EPA and DEP.

1 I think, this is very important for this permit to
2 spell out exactly -- to make that annual report useful. I
3 think, it's a very useful tool for transparency. But, in
4 order to make it -- to maximize its usefulness, I think,
5 it's very important that it specify what kind of -- that it
6 specified detail and it specified what kind of detail should
7 be included.

8 QQLA would also suggest that there should be a
9 live public presentation required. And I understand, again,
10 this may not be normal for a permit, but perhaps it should
11 be, that there be a forum like this at which the Town, after
12 having submitted its annual report, and what we propose is
13 that next February, that there be a meeting at which the
14 author of that report present to the public and answer
15 questions from the public regarding what has happened for
16 the previous year and what is planned for the next year.

17 Again, I think, in the long run, this will be
18 beneficial for all parties, this kind of -- for the public
19 to be informed, for the agencies to be informed and for the
20 public to have opportunities to actually ask questions and
21 express concerns about the progress that the Town is or is
22 not making.

23 I would also suggest that a third party reviewer
24 would be useful here to keep the Town honest and to ensure
25 that it's taking these requirements -- that it's moving

1 along quickly and that it's moving along intelligently, both
2 with respect to its designs and its construction of
3 upgrades.

4 Lastly, in some of the general NPDES permits, you
5 see a language about enforcement. You'll see language, for
6 example, in the construction general permit. Any violation
7 of this permit is a violation of the Clean Water Act for
8 which you can be fined, up to this amount, 50 some thousand
9 dollars per day per violation. I think, it's important to
10 have a paragraph like that in the permit. I don't think
11 there is one that actually sets forth -- that serves to give
12 the Town a clear advanced warning that there actually will
13 be enforcement consequences, and ideally, what those
14 enforcement consequences will be.

15 Obviously, there can be fines. But, I still think
16 it's important to actually say that in the permit. I think,
17 the Town has had a lot of experience with the law not being
18 enforced against them. And I think, it is safe to assume
19 the Town may have become accustomed to thinking that these
20 deadlines and the terms of this permit will not be very
21 vigorously enforced against them. And I think, a statement
22 will be useful about the agency's intention to hold the Town
23 to these deadlines, for example, and also, what the agencies
24 will do concretely. So, for example, it might say, if you
25 fail to meet these deadlines, the agencies intend to take

1 enforcement action, and this enforcement action may include,
2 aside from fines, it may include a ban on the receipt of
3 further transported septage or other waste from entities
4 that are not connected to the sewer system. Or perhaps, a
5 freeze on further connections. The type of enforcement
6 actions that agencies do tend to take against wastewater
7 treatment plants that are recalcitrant or that are violating
8 the terms of their permits.

9 It would seem very useful to spell that out right
10 here. Certainly, the Town is not going to be able to come
11 back later, if it becomes tardy or recalcitrant, it will not
12 be able to come back later and say that it did not
13 anticipate that these types of things would be the
14 consequences.

15 Again, all of this is written in some greater
16 detail in these comments. And on behalf of my client, we
17 really appreciate the time that you're spending this
18 evening, and also the time that you have spent communicating
19 with them. In particular, Robin, they really appreciate the
20 consideration that you have shown them in recent years. So,
21 thank you.

22 MR. WEBSTER: Thank you. Again, we're not going
23 to interact. But, after the hearing's closed, we can talk
24 about a lot of the ideas that you had there.

25 MR. VANDER SALM: Thank you.

1 MR. WEBSTER: That's the last card I have. Is
2 there anybody that did not speak that would like an
3 opportunity to make a statement? Come on up. Introduce
4 yourself.

5 MR. WEISS: My name is Randy Weiss and I'm an East
6 Brookfield resident. I live on Red Gable Road on North
7 Pond. And I've two comments. The first is a technical one.
8 It's pretty clear from the reports that this Spencer
9 Wastewater Treatment Plant has put out -- if they're
10 compared with the US geological survey gauge of the river
11 that's upstream from the plant, that when there's heavy
12 rains, the outflow from the plant increases dramatically.
13 And this is easy to see from comparing those two sites.

14 So, it's clear, although there's no direct proof,
15 there's no physical evidence of where the pipes are, that
16 the storm drains are somehow flowing into the wastewater
17 treatment plant. And this is a problem for any wastewater
18 treatment plant. Except, if there's a major overflow, it
19 does not affect the people in Spencer. The more of an
20 overflow, it will go down the Seven Mile River a mile and a
21 half. It will go under the bridge along Shore Road into
22 North Pond. And it will be at my house, because there are
23 no houses along the river and I'm the first house on the
24 pond.

25 And that's my first comment. My second comment is

1 a more emotional one and that is, that when the previous
2 owner of our house lived there, there was never a blue
3 algae, blue green algae bloom. And in the first half of the
4 time that my wife and I have lived there, there wasn't one.

5 But, the amount of phosphorous has increased. And
6 there was a significant bloom there. Now, it's a bloom
7 almost every year. There was a significant blue green algae
8 bloom about five or six years ago. And it's well on the
9 record, the algae was not just on the surface, but it looked
10 like little loaves of bread floating on the surface. And it
11 was so severe that, I think -- I believe, it was the
12 Massachusetts Department of Health that tested 10 or 15
13 wells, including ours, because once again, the phosphorous
14 comes down the river and it comes to me.

15 And it was terrifying for all my neighbors, my
16 wife and I. We were afraid our dog would drink the water.
17 There was a warning placed on all the trees. And this was
18 directly caused by the increased phosphorous from the plant.
19 It's well documented. Thank you.

20 MR. WEBSTER: Thank you. Thank you for your
21 comments.

22 Is there anybody else that would like to make a
23 statement during the public hearing?

24 MR. DUFALT: Yes.

25 MR. WEBSTER: Go ahead. Introduce yourself,

1 please.

2 MR. DUFAULT: Excuse me?

3 MR. WEBSTER: Introduce yourself when you get up
4 there for the stenographer.

5 MR. DUFAULT: Yes. Larry Dufault, Spencer Board
6 of Sewer Commissioner.

7 Not to be confrontational with you, Mr. Nielsen,
8 but I grew up around a couple of lakes, not on them. And
9 you know, 40, 50 years ago, I used to fish on that lake. It
10 was bad then. You know, we'd put the boat in. We'd get
11 out. We'd have to bring it back and scrub it down.

12 I have seen on that lake and many other lakes,
13 what you have had over the past 50 years is camps that were
14 being occupied for the weekend or whatever, and just for the
15 summer, have now turned into McMansions everywhere. I have
16 friends that have them.

17 So now, you're getting a lot more septage going in
18 right from your septage systems. Charlton did a nice thing
19 when they got their system around Glen Echo Lake. I don't
20 know that they forced everybody there, but most people
21 hooked into it. And that's a really clean lake today. It
22 always has been though.

23 Another thing to look at increased phosphorous is
24 not just your lake, but you've got Wickaboag, Whittemore,
25 Cranberry Lake, Stiles, all those houses around there are

1 all on septic systems and where's it all going. It's going
2 down to your house.

3 So, it's, you know, not just us. We understand
4 our responsibility to the environment. But, at the same
5 time, a lot of this phosphorous increase is coming from just
6 so many more people being around these lakes year round.
7 You know, I've seen it.

8 That's all I really have to say. And I agree.
9 It's just -- there's a lot more people on these lakes living
10 year round and they use a lot more water today than they did
11 in the past. So that is an issue. Thank you.

12 MR. WEBSTER: Thank you. Are there any other
13 comments on the permit that we have for the record?

14 Well, then, I would thank you for coming this
15 evening and your interest in the permit. There were a lot
16 of thoughtful and some very constructive comments to make
17 and to think about that. So, I appreciate that. Some of
18 the ideas and some of the reactions that you have from the
19 experience on the lake is useful. And we will considering
20 each one of those, and in the response to comments, try to
21 mull through whether those are things that we should be
22 changing in the permit or not.

23 Please remember, the public comment period ends at
24 midnight, March 28th. And you can still send in your
25 written comments or leave them off tonight.

1 With that I will close the public hearing at 6:00
2 o'clock -- no -- 7:00 o'clock. And thank you very much.
3 (Whereupon, at 7:00 p.m., the proceedings were
4 concluded.)

CERTIFICATE OF REPORTER AND TRANSCRIBER

This is to certify that the attached proceedings
in the Matter of:

RE: NPDES DISCHARGE PERMIT FOR
TOWN OF SPENCER WASTEWATER TREATMENT PLANT
SPENCER, MASSACHUSETTS
NPDES PERMIT NO. MA0100919

Place: Plymouth, Massachusetts

Date: March 26, 2018

were held as herein appears, and that this is the true,
accurate and complete transcript prepared from the notes
and/or recordings taken of the above entitled proceeding.

Maryann Rooney
Reporter

03/26/18
Date

Maryann Rooney
Transcriber

04/20/18
Date