



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

October 23, 2013

Kelly Martin Malone, Esq.
Donovan Hatem LLP
Seaport East
Two Seaport Lane
Boston, Massachusetts 02210

**Re: Wastewater Effluent Disposal Facility
Wolfeboro, New Hampshire**

Dear Attorney Malone:

We are in receipt of your letter dated October 10, 2013 summarizing the results of our meeting of October 7, 2013 and requesting DES input to advance development of solutions to the Wolfeboro, New Hampshire Rapid Infiltration Basins (RIBs) issues. In the conclusion to your letter, you requested that DES provide guidance on a possible path forward that could be acceptable to DES to utilize the RIBs as originally intended. We offer the following for your consideration in response to this request.

First, NH Code of Administrative Rules Env-Wq 1703.14 (e) provides that there shall be no new or increased discharge(s) containing phosphorus or nitrogen to tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds. In this context, it is not relevant whether the source of contaminants is a direct discharge to surface water or an indirect discharge through groundwater. Ultimately, the regulatory test is whether or not there are negative impacts on surface water caused by wastewater-derived nutrients or other contaminants. In this context, we believe that the following actions would represent significant steps forward:

- 1. The slope stabilization plan should be approved and implemented.** We have reviewed the proposed remedy for slope stabilization as submitted by Wright-Pierce and discussed at our October 7 meeting. The proposed slope stability remedy is primarily a matter for agreement between the Town and its Engineer. However, this will require amendment to the DES alteration of terrain permit so an amendment application should be submitted to DES for review and approval prior to construction of the proposed remedy.
- 2. The groundwater breakouts need to be addressed.** There can be no discrete groundwater breakouts that have been caused or substantially enlarged by wastewater discharged from the RIBs. Conceptually, this would require improvements in the dispersal of wastewater through groundwater to either natural or created wetlands to

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

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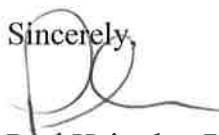
better spread the flow out. In addition to approval from the Wastewater Engineering Bureau, any proposal with physical impacts to wetlands or for wetlands creation must be reviewed and approved by DES for compliance with RSA 482-A and state wetlands regulations.

- 3. Conduct additional long term monitoring of surface water quality impacts with the facility operating:** A biomonitoring study of Nineteenmile Brook is already required by Paragraph 11 of the Groundwater Discharge Permit (No. GWP-200707014-W-002 issued to the Town of Wolfeboro by DES on September 21, 2012). Additional monitoring to ensure compliance with Env-Wq 1703.14 and other applicable water quality standards should also be implemented in order to determine whether nutrients discharged from the RIBs will contribute to cultural eutrophication or cause other surface water quality impacts. This work could either be incorporated into the biomonitoring study or conducted as a separate concurrent study. A scope of work for these studies must be submitted to DES for review and approval.

Finally, you have also expressed in your letter the opinion that the groundwater seeps at the site should not be considered to be point source discharges and, therefore, that this is not an issue that needs to be addressed. However, as discussed above, water quality regulations must be met regardless of this determination. Please be aware that DES authority to ensure compliance with state water quality standards is separate and distinct from the federal authority of the US Environmental Protection Agency (EPA) under the federal Clean Water Act to determine which discharges require federal NPDES permits. If you have additional questions concerning the applicability of the federal Clean Water Act permit requirements to this specific situation, we strongly recommend that you contact EPA directly.

Please contact me by telephone at (603) 271-2001 or email at Paul.Heirtzler@des.nh.gov should you wish to discuss this matter further.

Sincerely,



Paul Heirtzler, P.E., Esq.
Administrator
Wastewater Engineering Bureau

cc: William E. Brown, P.E. - Wright-Pierce Engineers
Peter C. Atherton, P.E. - Wright-Pierce Engineers
David Ford, P.E., Director of Public Works – Town of Wolfeboro
Rhian Cull, Esq. - Hinkley Allen & Snyder, LLP, Boston, MA
Rene Pelletier, Assistant Director - Water Division, DES
Mitch Locker - GWDWB, DES
K. Allen Brooks, Esq. – NH DOJ