

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

File No. ACO-CE-03-1011

Lancaster Sewer District

**ADMINISTRATIVE CONSENT ORDER AND NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

A. The Department of Environmental Protection (“the Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7. The Department maintains its principal office at One Winter Street, Boston, Massachusetts, and a regional office at 627 Main Street, Worcester, Massachusetts.

B. The Lancaster Sewer District (“the District”) is a municipal corporation located in Worcester County duly organized under the laws of the Commonwealth of Massachusetts with its principal offices located at 94 Main Street, South Lancaster Massachusetts.

II. STATEMENT OF FACTS AND LAW

C. The Department is responsible for the implementation and enforcement of M.G.L. c. 21, § 26 through 53, and the regulations promulgated thereunder at 314 CMR 3.00 and 7.00. The Department has authority under M.G.L. c. 21A, §16, and the regulations promulgated thereunder at 310 CMR 5.00, to assess civil administrative penalties to persons in noncompliance with its regulations.

D. The following alleged facts have led the Department to issue this Consent Order:

1. The District was created in 1967 by special act (G.L.c. 831, as amended) of the Massachusetts Legislature. The District owns, operates and maintains a sewer system (the “Sewer System”), which collects sewage and other wastes from properties connected thereto.
2. The District sewage and other wastes collected in the Sewer System discharges to the Massachusetts Water Resources Authority’s (the “MWRA”) wastewater treatment facility in the town of Clinton (the “Facility”) pursuant to a contract that allows the District to discharge up to 370,000 gallons per day (“gpd”) of sewage.
3. The MWRA holds a National Pollution Discharge Elimination System (“NPDES”) discharge permit, MA0040134, (the “Permit”) issued jointly by the Department and the United States Environmental Protection Agency (“EPA”), authorizing the discharge of up to 3.01 million gallons per day of treated effluent from the Facility to the South Nashua River. The District and the Town of Clinton are co-permittees for parts I.C and I.D.2 of the Permit. Pursuant to parts I.C. and I.D.2., the District is obliged to eliminate excessive infiltration and inflow (I/I) from its sewer system and to submit annually a report of actions taken to minimize I/I during the previous year.
4. In 1986 due to capacity limitations at the Facility, the Department issued an Administrative Order (Docket 630) to the Town of Lancaster establishing a sewer moratorium on new development. Although not named in the 1986

Administrative Order to the Town, the District has complied with the terms of the Order.

5. In a letter dated October 29, 1998, the Department responded to the District's request for relief from the 1986 Order by establishing a Sewer Bank program. Under this program the Department agreed to allow one gallon per day (gpd) of new flow to the District's sewer system in exchange for every two gpd of extraneous infiltration or inflow (I/I) the District demonstrated it had removed from sewers either in the District or in the Town of Clinton.
6. On May 21, 2003, the Department met with the District to discuss issues related to the Sewer Bank. The District and the Department agreed to enter into a consent agreement that formalizes the terms of the Sewer Bank and supersedes the 1986 Administrative Order.

E. As a result of discussions that have taken place between representatives of the Department and the District, and without adjudication of any fact or law set forth above, the parties have agreed to enter into this Consent Order.

### III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and the District hereby consents to, the following Order:

- F. The Department's authority to issue this Consent Order is conferred by M.G.L. c. 21, § 26 through 53, and the regulations promulgated thereunder at 314 CMR 3.00 and 7.00.

G. The District hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.

H. This Consent Order shall be binding on the District and on its officers, employees, agents, successors and assignees. The District shall not violate this Consent Order and shall not allow or suffer its officers, employees, agents, successors, assignees or contractors to violate this Consent Order. Violation of this Consent Order by any of the foregoing persons or entities shall constitute violation of this Consent Order by the District. The District shall provide a copy of this Consent Order to each successor or assignee concurrent with establishing any succession or assignment.

I. This Consent Order represents the full and final agreement among the parties concerning the allegations set forth above, subject to further amendment by written agreement of the parties, and supercedes all prior oral and written agreements and discussions.

J. This Consent Order shall not be construed as, or operate as, barring, diminishing, adjudicating or in any way affecting any legal or equitable right of the Department to issue any future Order with respect to the subject matter covered by this Consent Order, or in any way affecting any other claim, action, suit, cause of action, or demand which the Department may initiate. Notwithstanding the foregoing, compliance with the terms and conditions of this Consent Order shall be deemed to satisfy the District's obligations to the Department.

K. Notwithstanding any contrary provision of this Consent Order, the Department reserves the right, and this Consent Order is without prejudice to the right of the

Department, to institute further legal proceedings or to issue future administrative orders to compel the District to take additional actions if (i) information or conditions indicate that the actions taken pursuant to paragraph L below are not protective of public health, safety or welfare or the environment, or (ii) information or conditions indicate that there exists in the District Sewer System or the Facility a condition that poses a threat to the public health, safety or welfare or the environment.

L. The District shall perform the following actions:

1. Except where expressly exempted in paragraph L.2. below, or where authorized by the Department under the provisions of the Sewer Bank described in paragraph L.3 below, the District shall not allow any new connections to or extensions of its sewer system, regardless of whether the sewer connection or extension conveys any flow, nor shall it allow any increases in flow or changes in use of existing connections, unless expressly authorized by the Department in writing. This prohibition shall apply whether or not the proposed connections, increase in flow, or change in use is subject to Department approval requirements of 314 CMR 7.00, and shall remain in effect until the District demonstrates to the Department's satisfaction that: a) the Facility is capable of providing the required level of treatment on a continual basis, and b) the Sewer System has the capacity to convey all wastewaters received by it to the Facility.
2. The following new sewer connections or changes in use shall be exempt from the prohibition of paragraph L.1:

- a) Connections of existing premises where the Lancaster Board of Health certifies to the Department that the sewer connection is necessary to abate an imminent hazard to the public health, safety or the environment.
- b) Changes in use at existing premises already connected to the Sewer System that do not result in any increase in wastewater design flow or contaminant loadings to the sewer system.
- c) Sewer extensions and connections already authorized by a valid permit issued by the Department as of the effective date of this Consent Order.
- d) Sewer connections authorized by the Department pursuant to the terms of the Sewer Bank described in Paragraph L.3 below.

**SEWER BANK**

3. There is established herein, a flow credit arrangement (hereinafter referred to as the “Sewer Bank”) as described below. The Sewer Bank allows the District to make new connections to its sewer system provided that a sufficient amount of infiltration and inflow have been removed from either the District’s sewer system or the Town of Clinton’s sewer system. The Sewer Bank allows for the District to perform I/I removal activities over time and accumulate flow credit in the Sewer Bank for those I/I removal activities. The District may use the accumulated flow credits in its Sewer Bank to introduce new flows to the Sewer System. The District shall subtract from its currently available Sewer Bank balance the requested design flow for each new connection to the sewer system it issues.

4. Upon the effective date of this Consent Order, except for connections pursuant to paragraph L.2. above, the District may only allow new connections or increases in design flow to its sewer system pursuant the Sewer Bank.

#### **EARNING CREDITS**

- a) The District may earn flow credits, expressed in gallons per day (GPD), for new flow to the Sewer System by removing extraneous inflow and infiltration (“I/I”) from the Sewer System. The District may accrue one (1) GPD of new flow credit to its Sewer Bank for every two (2) GPD of I/I removed (1:2), provided that the Department approves the amount of new flow credit accrued. Under this Sewer Bank arrangement, the Department shall be the final approving authority regarding new flow credits to be accrued for documented I/I removal work. To obtain Sewer Bank credits the District shall submit to the Department for its approval a written request containing the following: (1) documentation of the actual amount of I/I flow originally present in the Sewer System, (2) a detailed description of the sewer rehabilitation work performed, and (3) final post rehabilitation field measurements of the amount of I/I actually removed from the Sewer System. The Department shall review the District’s submittal and shall either issue a flow credit for all or a portion of the documented I/I removed, request additional documentation to support the amount specified in this request, or deny the request for reasons stated.

**DISTRICT EARNING CREDIT FOR I/I REMOVAL  
IN THE TOWN OF CLINTON**

- b) The District may also earn flow credits at the same 1:2 rate described in paragraph L.4.A. above, by removing I/I from the town of Clinton's sewer system, provided that the town of Clinton certifies under pains and penalties of perjury on "the Town of Clinton's Certification of I/I Removal Credit Forfeiture Form", attached hereto as Attachment A, that;
- (1) the District may claim the credit for any documented I/I removed from the town of Clinton's sewer system, and; (2) that the town of Clinton forfeits any claims for flow credit to the town of Clinton's sewer bank for this I/I removal work.

**INITIAL CREDIT BALANCE**

- c) Within thirty (30) days of the effective date of this Consent Order, the District shall submit to the Department for approval, an initial credit balance for use in its Sewer Bank. The District shall calculate its initial credit balance using the flow credit it earned under the arrangement established by the Department's October 29, 1998 letter and subtracting the design flow for all sewer connections and extensions the District allowed since the Department's October 29, 1998 letter.

**USING CREDITS IN SEWER BANK FOR NEW CONNECTIONS**

- d) The District may allow new connections to its sewer system pursuant to this Sewer Bank provided that it has sufficient accumulated flow credits in its Sewer Bank for the design flow proposed from the new connection. If

the District allows any new connection to the sewer system, the flow credit balance in the District's Sewer Bank shall be reduced by the design flow of the approved sewer connection.

- e) Commencing thirty (30) days from the execution date of this Consent Order the District shall submit quarterly to the Department a Sewer Bank Summary Report, which shall include the previous quarterly balance in the Sewer Bank, any new credits accrued during the quarter, any flow credits expended during the quarter through the issuance of new sewer permits, and the new Sewer Bank balance.
  - f) The District shall not approve sewer permits under the Sewer Bank program for new construction that would impact downstream portions of its sewerage system where there is evidence of surcharging or overflow occurring due to inadequate capacity.
5. All submittals to the Department required by this paragraph shall be made in writing to:

Robert A. Kimball, P.E.  
Department of Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, Massachusetts 01608

M. The Department hereby determines, and the District hereby agrees, that the deadlines set forth above constitute reasonable periods of time for the District to perform the activities described above and come into compliance with the provisions cited in this Consent Order.

N. The activities performed pursuant to this Consent Order shall be performed in accordance with M.G.L. c. 21, § 26 through 53, and the regulations promulgated thereunder at 314 CMR 3.00 and 7.00 and all other applicable federal, state and local laws, regulations and approvals.

O. If the District violates this Consent Order, the District shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule:

For each day, or portion thereof, of each violation, the District shall pay stipulated civil administrative penalties to the Commonwealth as follows:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 <sup>st</sup> through 15 <sup>th</sup> days	\$100 per day
16 <sup>th</sup> through 30 <sup>th</sup> days	\$250 per day
31 <sup>st</sup> day and thereafter	\$500 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the District corrects the violation or returns to compliance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified the District of a violation or act of noncompliance. The payment of stipulated civil administrative penalties shall not alter in any way the District's obligation to complete performance as required by this Consent Order.

All stipulated civil administrative penalties accruing under this Consent Order shall be paid within ten (10) days of the date the Department sends the District a written demand for payment. If a court judgment is necessary to execute a claim for stipulated penalties

under this Consent Order, the District agrees to assent to the entry of such judgment. The stipulated civil administrative penalties set forth herein shall not be construed as, or operate as, the exclusive remedy for violations of this Consent Order. The Department reserves its right to elect to pursue other remedies and/or penalties, including administrative, civil and criminal penalties, in accordance with applicable laws if the District violates any provision of this Consent Order. In the event the Department elects to pursue such other remedies or penalties, the District shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order.

P. The District shall pay all civil administrative penalties due under this Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. The District shall clearly print on the face of its payment the District's full name, the file number appearing on the first page of this Consent Order and the District's Federal Employer Identification Number, and shall mail it to: Commonwealth of Massachusetts

Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3584  
Boston, Massachusetts 02241-3584

The District shall deliver a copy of the payment to:

Deputy Regional Director for the Bureau of Resource Protection  
Department of Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, Massachusetts 01608

In the event the District fails to pay, in full, any civil administrative penalty due under this Consent Order in the manner and form required by, and the date due by, this Consent

Order, the District shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C. The District shall not be deemed to have returned to compliance until the District pays all penalties due under this Consent Order and performs the actions set forth in paragraph M above.

Q. The District agrees to allow the Department, and the Department's employees, authorized representatives and contractors, to enter the Facility at all reasonable times to:

1. Inspect any equipment and facilities used in performing activities authorized by this Consent Order;
2. Sample any wastes, by-products, recovered materials or discharges;
3. Have access to and photocopy any records the District is required to make, keep or maintain under this Consent Order; and
4. Verify that the District is satisfying the terms and conditions of this Consent Order and the laws and regulations administered by the Department.

R. This Consent Order shall not be construed as, or operate as, relieving the District or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

S. This Consent Order may be amended from time to time by mutual agreement, only in writing executed by the parties

T. 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 the Department shall have the discretion to void this Consent Order in the event of any such invalidity.

U. This Consent Order shall become effective on the date of execution on behalf of the Department.

V. Each undersigned representative certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf such representative is signing to this Consent Order.

W. The District acknowledges that it has had the right to consult with and be advised by counsel in connection with the negotiation and execution of this Consent Order. The District acknowledges that the Department has not constrained the District's right to consult with counsel in any way in connection with the negotiation and execution of this Consent Order.

X. The District and the Department represent that each of them has cooperated in the drafting and preparation of this Consent Order. Hence, no ambiguity in this Consent Order shall be construed against either of them.