

**DELAWARE
COASTAL ZONE ACT
PERMIT**

NUMBER: 386

ISSUED TO: Tidewater Environmental Services, Inc.

TO PERMIT: The construction and operation of a regional wastewater treatment and disposal facility

SITE LOCATION: Vicinity of State Route 24 and Camp Arrowhead Road, south of Love Creek in Sussex County, Delaware

Conditions Incorporated and Made Part of this Permit:

Standard:

1. This permit is conditional upon the Permittee's compliance with all other applicable permit requirements, regulations and laws of the State of Delaware.
2. Issuance of this permit does not relieve the Permittee of the legal obligation of complying with all building permits, subdivision and other applicable code requirements of the county or municipality wherein the permitted project is located.
3. If there are significant deviations from the plan and operations approved by the Secretary, the Permittee shall notify the Secretary as soon as possible. This permit may be revoked and a new permit application required if the Secretary deems the deviation to substantially change the nature of scale of the project and to be of actually or probably harm to the purposes of the Coastal Zone Act.

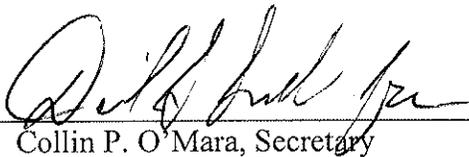
Special:

4. The Permittee shall submit to the Department a construction permit application based upon a design limit of 1.45 million gallons per day, which is a reduction supported by the Department's groundwater discharge study.
5. The Permittee shall attempt to minimize their environmental footprint (i.e., ground disturbance), particularly as it relates to deforestation, and shall submit to the Department as part of its construction permit a reforestation plan equal to 130% of

the estimated loss of mature forest.

6. The Permittee shall submit to the Department as part of its construction permit a plan to comply with the recommendations within the Natural Heritage Program's report.
7. The Permittee shall submit to the Department as part of its construction permit an operations plan that establishes under normal operations a priority use of spray irrigation to the maximum extent practicable, particularly during the early phases of the project to maximize the environmental and agricultural benefit, and a priority use of spray irrigation of agricultural areas over use of spray irrigation of wooded areas.
8. The Permittee shall relocate the rapid infiltration basin on the northern portion of the combined parcel area to a more appropriate location in consultation with the Department.
9. The Permittee shall prepare a surface water assessment report to demonstrate that the project meets Total Maximum Daily Loads (TMDLs) established for the surrounding watersheds.

Signature: _____



Collin P. O'Mara, Secretary

Date: _____

7/30/2010

Department of Natural Resources & Environmental Control



JAN 11 2011

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-9000
FAX: (302) 739-6242

January 5, 2011

Mr. Bruce E. Patrick, P.E.
Tidewater Environmental Services Inc.
1100 South Little Creek Road
Dover, DE 19901

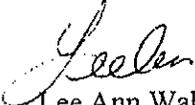
Dear Bruce:

Thank you for your letter of December 20, 2010 and attachments detailing your intentions to comply with all nine of the conditions of your Coastal Zone permit to construct and operate a regional wastewater treatment facility.

This letter is considered in addition to a November 3 letter to Secretary O'Mara describing environmental, agricultural and financial challenges to spraying in the very earliest phases of the project and your proposal to meet Permit Condition 7 and a November 5 letter to me describing how you believe you have met Permit Condition 9 requiring a Surface Water Assessment Report. Likewise, we have had several meetings with you and your consultants, Surface Water Discharges staff, and others to discuss, in particular, how Condition 7 can be met.

After reviewing all the correspondence and attachments, DNREC is satisfied that Tidewater meets the special conditions of Coastal Zone Permit #386-P if the company adheres to the phasing of the project as described in the December 20 correspondence and abides by the included reforestation (Special Condition 5) and Natural Heritage (Special Condition 6) compliance plans.

Sincerely,


Lee Ann Walling
Chief of Planning

cc: Katherine Bunting-Howarth
Dave Schepens
John Schneider

Delaware's Good Nature depends on you!

TIDEWATER
ENVIRONMENTAL SERVICES, INC.
1100 SOUTH LITTLE CREEK ROAD
DOVER, DELAWARE 19901

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JAN 07 2011
GROUNDWATER

December 20, 2010

Ms. Lee Ann Walling
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: Wandendale Coastal Zone Act (CZA) Permit Number 386 Special Conditions
- Tidewater Environmental Services, Inc.

Dear Ms. Walling:

This letter is intended to address how the Conditions in the above referenced permit will be addressed.

Standard Condition 1 – We will be complying with all other applicable permit requirements, regulations and laws of the State of Delaware.

Standard Condition 2 - We will be complying with all building permit and other applicable code requirements of Sussex County.

Standard Condition 3 – We will notify the Secretary as soon as possible if there are significant deviations from the plan and operations approved by the Secretary.

Special Condition 4 – We will be submitting a construction permit application for 1.45 MGD, under separate cover, to the Department.

Special Condition 5 - We have minimized the environmental footprint, particularly as it relates to deforestation, 7.5 total acres will be deforested in total in all 12 phases of the project. We will be submitting a reforestation plan equal to 130% (9.9 acres) of the estimated loss of mature forest as part of the construction permit referenced above. The reforestation plan will be implemented in phases as land is deforested.

Special Condition 6 – We will be submitting a plan as part of the construction permit application to comply with the recommendations of the Natural Heritage Program's report.

Special Condition 7 – As noted above, our facility is being implemented in multiple phases. Treatment capacity will be expanded in increments of 150,000 gpd, except for the last phase at 100,000 gpd. The initial, overall construction permit application will be for 1.45 MGD, for RIB

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disposal. Three of the six RIB beds shown in the attachment will be built with the land area for the other three reserved as spare capacity until the DDR work for the spray sites has been completed and the spray capacity established. Then most of the spray sites will become the backup for the RIBs, which can then be expanded to the full six beds. However, spray will be implemented in the early phases as described below in this plan of implementation:

Phase 1 – Pump and haul for up to 15,000 gpd. The wastewater will be hauled to a TESI approved facility that is already in operation such as Hart's Landing or Bay Front, where excess capacity exists. It will be treated to Total Nitrogen (TN) of 5 mg/l or less.

Phase 2 – Construct a 150,000 gpd treatment plant (two units of 75,000 gpd each). One unit will be placed into operation (75,000 gpd) once the 15,000 gpd flow is achieved, this is 20% of one of the 75,000 gpd treatment units and will allow proper treatment to meet the pollution control strategy limits as proposed. A single Rapid Infiltration Basin (RIB) will be built, temporarily portioned into six beds and used for disposal of treated effluent.

Phase 3 – Place the second 75,000 gpd treatment unit into operation as the flows increase and provide both treatment units with enough flow to perform at design standards. RIB Disposal will be used. This will allow up to 150,000 gallons per day to be discharged to the RIBs. When flow approaches 145,000 gpd (10% of the overall construction permit), TESI will begin spray irrigating as needed on landscaping on the exterior berms of the RIBs. This will be done as an activity not requiring a permit in accordance with Section 3.4.1.10 of the Regulations Governing the Control of Water Pollution.

Phase 4 – Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 300,000 gpd) to be discharged to RIBs. Another RIB will be built at this time bringing the cell total to 2 of the 6 that will eventually be built.

Phase 5 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 450,000 gpd) to be discharged to RIBs. A third RIB will be constructed during this phase. In addition, an irrigation well, tentatively sized at 600 gpm, will be installed in the Columbia formation down gradient from the RIBs to withdraw groundwater and co-mingled treated water. The well will be used for spray on demand for the field closest to the RIB site. The wetted area under the center pivot depicted is 28 acres. Should we elect to use a travelling gun; the spray area can be expanded to a total of 43 acres. Spray from the well will begin after 300,000 gpd flows are reached, so at 20% of the overall 1.45 MGD permitted flow. A Design Development Report (DDR) will be submitted for the agricultural spray areas before flows to the treatment plant reach 450,000 gpd, to demonstrate the full capacity of the Agricultural Spray fields.

Phase 6 – Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 600,000 gpd) to be discharged to RIBs. In addition, infrastructure including storage to spray irrigate treated wastewater onto Spray Area 3 will be in place prior to flows reaching 600,000 gpd. It is anticipated that the irrigation well will still be used to meet

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peak crop consumptive demands that cannot be met with the volume of treated wastewater available during this phase. Additional RIBs will be constructed during this phase. The total RIB operating capacity at this time shall not exceed the spray area reserve capacity established by the DDR. The RIB permit capacity is expected to be 1.45 MGD.

Phase 7 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 750,000 gpd). Spray irrigation on an as needed basis will take place on Spray Area 3 and the excess will go to RIB discharge. In addition infrastructure to spray irrigate on Spray Area 8 (7.21 acres) must be in place prior to flows reaching 750,000 gpd.

Phase 8 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 900,000 gpd). Spray irrigation on an as needed basis will take place on Spray Areas 3 and 8 and the excess will go to RIB discharge.

Phase 9 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 1,050,000 gpd).

Phase 10 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 1,200,000 gpd).

Phase 11 - Construct an additional 150,000 gpd plant capacity (Total plant capacity will be 1,350,000 gpd).

Phase 12 - Construct an additional 100,000 gpd plant capacity (Total plant capacity will be 1,450,000 gpd).

Special Condition 8 – The RIB on the northern portion of the site has been eliminated.

Special Condition 9 – This condition has been addressed in my November 5, 2010 letter.

We respectfully request your concurrence regarding the approaches described herein to address the mentioned conditions. Should you have any questions regarding this matter, please feel free to contact me at 302-734-7500, ext. 1023.

Sincerely,

Bruce E. Patrick, P.E.
Vice President of Engineering

BEP
cc: Gerard L. Esposito, President (W/Attachments)

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Jerry Homer, Esq.
Parkowski, Guerke & Swayze (W/Attachments)

Mr. Lee J. Beetschen, P.E., DEE
CABE Associates, Inc. (W/Attachments)

Attachments

**COASTAL ZONE ACT PERMIT NO. 386
PLAN TO COMPLY WITH RECOMMENDATIONS OF THE
NATURAL HERITAGE PROGRAMS REPORT
NOVEMBER 29, 2010**

The Wandendale Regional Wastewater Treatment and Disposal project located in Sussex County, Delaware was visited by Delaware Natural Heritage and Endangered Species Program environmental scientists on July 16, 2009 and July 21, 2009. The purpose of the first visit was to do an initial evaluation for vegetative communities and for habitat that could support bird species of conservation concern. The second visit was a rare plant survey conducted on a small portion of the site. A report entitled "Natural Heritage Program Survey Report of the Wandendale Regional Wastewater Treatment and Disposal Project" (the Report) was completed on September 11, 2009. That report included a summary of the findings and recommendations.

Implementation of the 1.45 MGD Wandendale project will proceed in multiple construction steps. Wastewater disposal will be primarily through RIBs. However, irrigation will occur early in the implementation of this project. Both of these spray areas are on agricultural lands and, therefore, were not the subject of the Report. No spraying is proposed in forested land. Thus, the areas of concern noted in the Report will not be significantly affected by this project.

The purpose of this plan is to establish the steps necessary to adhere to Special Condition No. 6 of the CZA permit that requires a plan to comply with the recommendations of the Report which were as follows:

Recommendation 1.

"The forests found on the Wandendale Property are generally good mature examples of the community types. There are concerns regarding the long-term impact of spray irrigation on ground water due to increased run-off and on soil salinity. Please refer to our final letter

dated June 22, 2009 for concerns about potential impacts of wastewater on wildlife that inhabit forested areas, specifically ground nesting birds and amphibians. Recommendations provided in this letter should still be considered.”

Plan 1. The letter dated June 22, 2009 recommended that at least 100 foot upland buffer, (preferably 300 feet), be left intact between spraying activities and all wetlands. A minimum 100 foot buffer has been identified on the final site plan drawing that is currently under review by Sussex County Planning and Zoning.

Recommendation 2.

“Rare plants were found within the Red Maple-Seaside Alder Woodland community and the Red Maple-Sweetgum Swamp (described below). In order to maintain these state rare species, it is recommended that the upland buffer be expanded to avoid or minimize runoff and nutrient enrichment.”

Plan 2. A minimum 100 foot buffer from federal wetlands has already been identified on the final site plan. There will be a 250 foot buffer from Spray Irrigation Area 1. Also, There will be a 200 foot wetland buffer from Spray Irrigation Area 2 that will be expanded to 500 feet by reforestation in Area F as is discussed in the Reforestation Plan that accompanies the construction permit application for this project.

Recommendation 3.

“Rare plants were found within the Successional Tuliptree Forest and the Northeastern Dry Oak-Hickory Forest. In order to maintain these area plant populations, it is recommended that the tree canopy remain intact, and soil disturbance and nutrient enrichment be avoided.

Nutrient enrichment to these sites will likely result in the explosion of non-native invasive plants that could overrun the communities.”

Plan 3. There will be no project activity in these forested areas.

Recommendation 4.

“If tree clearing is unavoidable, it should not occur during the nesting season, April 15 to July 31st, to minimize impacts to breeding birds. Care should be taken to protect any standing snags or trees with natural cavities as these will support multiple avian species and other vertebrates throughout the entire year.”

Plan 4. Tree clearing has been avoided to the extent possible in development of the site plan. However, it will be necessary to clear trees for the wastewater treatment site, incrementally over the duration of the construction phase of this project. Therefore, the construction drawing cover sheet for each bidding phase will include a general note stating that “No tree clearing shall take place between April 15 and July 31.”

Recommendation 5.

“To further address concerns about rare, threatened or endangered species and to accurately assess habitat use, additional surveys should be conducted during the peak breeding period, April 15 through July 31, particularly during June.”

Plan 5. The forested areas that were the subject of this recommendation will not be affected by this project, other than the incremental clearing of trees for the construction of the wastewater treatment plant. The scientists that conducted these site investigations believe that additional surveys are necessary during

the breeding period. It is suggested that these surveys be deferred, except for the treatment plant site, until spray irrigation activities on forested lands is imminent.

Recommendation 6.

“Surveys weren’t conducted specifically for amphibians and reptiles, so species distribution and habitat use are unknown. However, a box turtle was observed within the transition zone between the Southern Red Maple-Black Gum Swamp and Southern Red Oak/Heath Forest. Because box turtles have relatively small home ranges, we recommend impacts to this forest be avoided or minimized.”

Plan 6. There will be no project activity in these forested areas.

CZA
mailed 11/4/10

TIDEWATER
ENVIRONMENTAL SERVICES, INC.
1100 SOUTH LITTLE CREEK ROAD
DOVER, DELAWARE 19901

November 3, 2010

The Honorable Collin O'Mara
Secretary
Delaware Department of Natural Resources & Environmental Control
844 Kings Highway
Dover, DE 19901

RE: Wandendale Coastal Zone Act Permit (CZA) – Tidewater Environmental Services, Inc.
Special Condition 7 regarding spray irrigation preference

Dear Secretary O'Mara:

This letter is a follow-up to my August 4, 2010 letter and also intended to address Special Condition 7 in the above referenced permit. Special Condition 7 in the referenced CZA permit requires that we prepare and submit a plan, coincident with our construction permit application, that uses spray irrigation as the preferred discharge method to the extent practical, particularly early and preferably not in the woods.

As mentioned in my August 4, 2010 letter there are both economic and agronomic reasons that make it impractical to spray irrigate in the early stages of this project. We discussed these issues at a meeting with Lee Ann Walling and other members of your staff on October 26, 2010. I was accompanied by our engineering consultants, Lee Beetschen and Scott Hoffman of CABA Associates. We presented an outline of our plan to meet the "spray early as soon as practicable" essence of Condition 7. Obviously, we thought it appropriate to have a meeting of the minds on the plan concept before the plan is submitted with our construction permit application.

The economic constraints on spray first and earliest are many, but perhaps the greatest impediments in this case are the costs to do the field work and prepare the necessary Design Development Report (DDR) as required by the land treatment regulations and the costs for designing and building a storage lagoon.

To date, TESI has spent in excess of \$1,450,000 on the project, much of it to address various DNREC regulatory concerns. The very expensive soils and geohydrologic testing and analysis that has been completed and reviewed by your staff has proven the suitability of RIBs. My March 3, 2010, letter to Mr. Jack Hayes, with DNREC's Division of Water Resources, cited some of the work and asked for DNREC's concurrence that the RIBs area be used first and, once half the RIB area capacity (725,000 gpd of 1.45 MGD) is reached, additional work be done to demonstrate the acceptability of using the spray irrigation area. DNREC's written response concurred with that approach (See attached letter.)

The support of DNREC's Division of Water Resources for use of the RIBs before spray irrigation is grounded in practicality because the scientific work for using RIBs has been completed and approved by DNREC. To shift gears at this time and make spray the preferred method would involve the additional costs mentioned above and in my August 4, 2010 letter. Such additional costs are prohibitive in the early stages of service where relatively few users would have to bear unreasonable rates for service.

In the early stages of the project, there are agronomic constraints as well. There will not be enough water to make spray irrigation meaningful to the consumptive needs of a crop. Also, the argument for using spray irrigation is based in large part on the advantages of nutrient uptake when the wastewater is sprayed on the fields (see Special Condition 7 which references the "agricultural benefit" of spray irrigation), but in this case, after treatment at the our state-of-the-art wastewater treatment plant, the effluent will have less nutrients than native groundwater.

Now, to the issues of the DDR and the storage requirements associated with implementing the spray first concept. The soils and hydro-geological investigation that are an important scientific component of the DDR are needed to establish the infiltration capacity of a particular field with the thought of maximizing the capacity for disposal purposes. Performing this work now would be both time consuming and expensive. The storage needed for spray disposal sites for periods when the ground is frozen or saturated and to work around the agronomic practices of the farmer tilling the field is certainly warranted for those purposes but brings with it a high financial burden at the beginning stages of the project. A well meant suggestion was made by your staff to build a smaller storage lagoon, 3.0 million gallons for the startup phase of the project. However, incrementally building lagoon earthworks is totally impractical and also adds unnecessary costs.

In light of the above constraints, we have a plan that we believe satisfies Special Condition 7, while allowing TESI to defer the issues mentioned above in accordance with the phasing plan outlined in my March 3, 2010 letter. At the October 26, 2010 meeting with your staff and in this letter, TESI is proposing to meet the requirements of Special Condition 7 by spray irrigating only on an as needed basis for one field (the field closest to the RIB system) during periods of maximum crop demand in the summer at, or below, the consumptive use of the crop. This will defer the need for the DDR and associated work in accordance with my March 3, 2010 letter that DNREC has already approved. As there will not be sufficient flow under any scenario to provide sufficient treated wastewater to meet consumptive crop needs in the early stages of development, TESI proposes discharging into the RIB and storing the water in the ground as a reasonable interim substitute for the lagoon storage. Therefore, lagoon storage under the consumptive use early scenario will not be needed for agronomic practices, or for frozen or saturated ground conditions. Two factors that support this concept of using groundwater comingled with treated effluent are the lack of nutrients in the treated effluent and the slow movement of the water once it enters the groundwater. The TESI wastewater system was never intended to supply crop nutrient needs. The slow movement means that much of the

groundwater will remain on Wandendale site for years. TESI would install a well to partially recover the treated effluent while comingling it with existing groundwater to provide sufficient volume to meet crop needs. This type of activity could be permitted by approving the RIB discharge as outlined in my March 3, 2010 letter and also permitting the spray on demand in conjunction with Senate Bill 129 from the 145th General Assembly that permits farmers to accept reclaimed water through irrigation systems. This would be similar to what was recently implemented in the Middletown area.

All of the treated water would not be collected, but it would not matter under this scenario as the RIB discharge would be permitted as DNREC has already confirmed the suitability of RIBs for this site. The Secretary's environmental assessment report states:

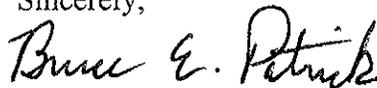
“As proposed and as reviewed by DNREC's Watershed Assessment Section, the Wandendale wastewater facility will meet the applicable provisions of the Inland Bays Pollution Control Strategy.”

In addition, I have enclosed a Wastewater Technology Fact sheet from the United States Environmental Protection Agency (US EPA) that supports the concept of recovering water from RIB systems with a well for beneficial reuse.

We believe this plan satisfies Special Condition 7 and respectfully request your timely concurrence as we need to finalize our construction permit application so we can move forward with other aspects of this project. Ms. Walling had promised us a response on, or before, November 2, so time is of the essence.

Thank you for this opportunity to correspond directly with you. Should you have any questions regarding this matter, please feel free to contact me at 302-734-7500, ext. 1023.

Sincerely,



Bruce E. Patrick, P.E.
Vice President of Engineering

cc: Lee Ann Walling, DNREC
Gerard L. Esposito, President
Lee J. Beetschen, P.E., Cabe Associates

Enclosure – DNREC letter
(US EPA Wastewater Technology Fact Sheet on Rapid Infiltration Land Treatment)

TIDEWATER
ENVIRONMENTAL SERVICES, INC.
1100 SOUTH LITTLE CREEK ROAD
DOVER, DELAWARE 19901

November 5, 2010

Ms. Lee Ann Walling
Department of Natural Resources
and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: Wandendale Coastal Zone Act (CZA) Permit - Tidewater Environmental Services, Inc.
Special Condition 9 regarding surface water assessment report

Dear Ms. Walling:

This letter is a follow-up to our October 26, 2010 meeting and is also intended to address Special Condition 9 of the referenced permit which reads as follows:

“The Permittee shall prepare a surface water assessment report to demonstrate that the project meets total maximum daily loads (TMDLs) established for the surrounding water sheds”.

We believe that this condition is redundant as we have already demonstrated that the project meets the Total Maximum daily Loads (TMDL) established for the surrounding watersheds.

As you are aware, Tidewater Environmental Services, Inc. (TESI) and its experts have provided testimony on this issue at the Coastal Zone Public Hearing and at the hearing before the Delaware Coastal Zone Industrial Control Board. Our Wandendale project wastewater treatment and disposal facility meets the requirements of Pollution Control Strategy Performance Standard Number 1 for nitrogen and exceeds the requirements for Performance Standard for Phosphorus Number 1. Thus, by default our project complies with the TMDL.

In further support of our opinion that compliance with the Pollution Control Strategy demonstrates compliance with the TMDL, we provide the following:

Exhibit 1 is an excerpt from the State of Delaware Surface Water Quality Standards as amended July 11, 2004. Note that Section 5.6.3.4 Pollution Control Strategy requires that a pollution control strategy be developed for all stream basins designated as ERES waters. The Inland Bays Watershed is designated as ERES waters in the standards document. The pollution control strategy is to provide for the implementation of not only best management practices for non-point sources of pollution, but also the delineation, where appropriate, of the specific point source effluent limits necessary to achieve water quality standards.

Therefore, the concept of pollution control strategy was originally defined in the Surface Water Quality Standards. Clearly the intent was that all measures for both non-point and point sources be incorporated in the strategy in order that water quality standards be achieved.

Exhibit 2 is an e-mail from Lyle A. Jones to Scott Strohmeier dated February 3, 2010, in response to a request for a meeting on Wandendale. Mr. Jones says "The system is in the Inland Bays and based upon my understanding of various meetings on Wandendale, the system will be designed to meet PSN1 (5 mg/l) and the phosphorus will be significantly reduced. The site will have 100 foot buffers. I can't add anything to the meeting because all PCS requirements will be met if the system is permitted."

Summing up, Mr. Jones is literally saying that if the PCS requirements are met, the TMDL will be met.

Exhibit 3 is an excerpt from the Total Maximum Daily Load (TMDL) Analysis for Indian River, Indian River Bay and Rehoboth Bay, Delaware dated December 1998. The closing paragraph of the Executive Summary states as follows:

"Implementation of this proposed TMDL will be achieved through development and implementation of a Pollution Control Strategy (PCS). The PCS will be developed by DNREC in concert with the Department's on-going whole basin management program and the affected public."

Thus this technical document clearly states the intention that the PCS will be used to implement and comply with the TMDL.

Exhibit 4 is a copy of Secretary's Order Number 98-W-0044 dated November 6, 1998. This order was for the purpose of establishing the TMDL regulation for the Inland Bays. Item 20 of the Findings of Fact (Pg 3) states:

"Exemptions for certain point sources are not available under the language of the proposed TMDL although the Pollution Control Strategy will be implemented in a manner that should equitably distribute the burdens of compliance by all stakeholders."

Article 8 of the TMDL (Pg 6) reads as follows:

"Implementation of this TMDL regulation shall be achieved through development and implementation of a Pollution Control Strategy. The strategy will be developed by DNREC in concert with the Department's on-going whole basin management program and the affected public."

Clearly, both Item 20 and Article 8 indicate that the PCS will be used to achieve compliance with the TMDL.

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Exhibit 5 is the Secretary's Order Number 2008-W-0054 dated October 15, 2008 for the purpose of adopting final regulations governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay. Item 2 on Page 16 reads as follows:

“The issuance of the proposed regulations as final regulations will protect and improve the water quality of the Inland Bays and allow, together with other Department regulatory actions, the Inland Bays to attain their duly promulgated water quality standards.”

Exhibit 6 is the forward to the Pollution Control Strategy Regulation and reads as follows:

“In order to achieve the Total Maximum Daily Load (TMDLs) determined through vigorous research and modeling, the following pollution control strategy regulations must be implemented.”

Exhibit 7 is a copy of the Delaware Coastal Zone Act Permit 386 for the construction of the Wandendale Regional Wastewater Treatment and Disposal Facility. Special Condition 9 is repeated as follows:

“The permittee shall prepare a surface water assessment report to demonstrate that the project meets TMDLs established for the surrounding watersheds.”

We are providing this exhibit merely to complete the record.

Exhibit 8 is an excerpt from Page 55 of the Coastal Zone Industrial Control Board Decision and Final Order. The highlighted paragraph reads as follows:

“The Board next considered the environmental Appellants' argument regarding the failure to consider whether the facility will comply with the Inland Bays TMDL. The Board rejects this argument. The Board accepts the testimony provided by TESI witness Lee Beetschen. The Inland Bays TMDL itself states that it shall be implemented through the Inland Bays PCS. The record clearly reflects that the facility's treatment will meet the PCS levels and therefore comply with the TMDL.”

As you may recall, during the course of our October 26, 2010 meeting on this subject, John Schneider disclosed that the requirement for the surface water assessment report came from the draft of The Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems that existed at the time of the issuance of the Coastal Zone Act permit for the Wandendale project. He indicated at the meeting that we might be able to use the current revision to support our contention that compliance with the PCS is tantamount to compliance with the TMDL. Toward that end, we are submitting several excerpts from the October 27, 2010 draft. Note that subsection 5.2.4.6 states the following:

Ms. Lee Ann Walling
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One of the following approaches must be used (to satisfy the surface assessment requirement):

- 5.2.4.6.1. Demonstration that the wastewater treatment facility is capable of achieving performance standards (as defined in the definitions and identified in Exhibit MM) at the post-treatment location for nitrogen and if required, phosphorus as determined in 5.2.4.5.

We are providing relevant copies of the definitions and the cited exhibit to demonstrate that we will be in compliance with the nitrogen requirement because we intend to treat to PSN1 levels. Since we will be treating phosphorus to almost eight (8) times less than the required PSP1 we are also in compliance with that requirement.

In closing, we believe that the record provided from Exhibits 1 through 8 demonstrates that Wandendale is in compliance with all existing regulations and with the intent of the TMDL and Pollution Control Strategies. We believe that the current modification of the draft regulations is supportive of our conclusion in this matter, but recognize that this regulation may change before it is adopted and, therefore, are only providing this exhibit as a matter of information for you.

Thank you for this opportunity to address this matter after having met with you and other DNREC staff members. Should you have any questions regarding this matter, please feel free to contact me at 302-734-7500, ext. 1023.

Sincerely,



Bruce E. Patrick, P.E.
Vice President of Engineering

BEP

cc: Gerard L. Esposito, President (W/Attachments)

Jerry Homer, Esq.
Parkowski, Guerke & Swayze (W/Attachments)

Mr. Lee J. Beetschen, P.E., DEE
CABE Associates, Inc. (W/Attachments)

Attachments