

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

In the matter of:)
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)
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City of Brockton)
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File No.: 00001010
Program ID: Chapter 91 License No. 4987
Water Supply ID: 404000
Issuing Region: Southeast
Issuing Bureau: Water Resources

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.
2. City of Brockton ("Respondent") is a Municipality with a mailing address of Brockton City Hall, 45 School Street, Brockton, MA 02301.

II. STATEMENT OF FACTS AND LAW

3. Massachusetts regulations at 310 CMR 4.00 establish Surface Water Quality Standards for Massachusetts water bodies. MassDEP implements programs to evaluate water quality to determine if impairment of those standards exists, so impaired water bodies can be identified through listing and targeted for improvement.
4. MassDEP has listed East and West Monponsett Pond as impaired. West Monponsett Pond is of particular concern because excess phosphorus in the water column and sediment is causing annual cyanobacteria blooms during warm weather. The largest controllable sources of excess phosphorus in West Monponsett Pond result from storm-water runoff, residential growth around the pond, and the pond receiving agricultural return flows related to cranberry cultivation. Phosphorus recycling into the water column from bottom sediment is also a major source of phosphorus in West Monponsett Pond.
5. Because MassDEP has listed Monponsett Pond as impaired, to comply with the requirements of the Federal Clean Water Act (CWA), MassDEP is preparing a Total Maximum Daily Load (TMDL) report for East and West Monponsett that will estimate the annual nutrient additions to the water bodies, calculate the nutrient load carrying capacity for each, and set goals for nutrient reductions

according to the land-uses and activities around East and West Monponsett. The Draft TMDL has been released for public comment.

6. Based on the recommendations and nutrient reduction goals in the Final TMDL, MassDEP will work with the Town of Halifax, Town of Hanson, and area cranberry growers to have actions taken to reduce the annual phosphorus load entering Monponsett Pond and to address existing excess phosphorus in the water column and pond sediment.
7. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 91 and the Waterways Regulations at 310 CMR 9.00, including the issuance of Chapter 91 Licenses to install, maintain and operate structures in Great Ponds and navigable waterways.
8. The Respondent holds Massachusetts Chapter 91 License No. 4987 for a dam on Stump Brook, a navigable waterway, and water diversion apparatus in and between Monponsett Pond and Silver Lake, both Great Ponds, for the purpose of supplying water to the Brockton Water Department.
9. The Respondent operates the Brockton Department of Public Works - Water Division for the purpose of supplying water to the inhabitants of Brockton, Whitman, and surrounding towns. The Brockton Department of Public Works - Water Division is a public water supplier with Public Water Supply ID# 404000.
10. On November 2, 1995, the Respondent entered into Administrative Consent Order ACO-SE-95-5005 with MassDEP (subsequently amended on February 21, 1997 and December 2, 1997) related to the Respondent's public water supply system. This Consent Order supersedes ACO-SE-95-5005 and its amendments in their entirety and the Respondent is released from said ACO-SE-95-505 and its amendments in their entirety.
11. On June 1, 2005, MassDEP issued the most recent modification of the Respondent's Water Management Act (WMA) Permit #9P-4-25-044.01 for water supply related withdrawals from the Taunton River Basin. Special Condition #4 of Permit #9P-4-25-044.01 requires submittal of a *Comprehensive Water Management Plan* as follows: "The Comprehensive Water Management Plan shall identify how Brockton will manage its withdrawals, including any volumes purchased, to minimize the environmental impacts associated with the withdrawals. In addition, the plan will review Brockton's long-term water supply strategy and provide an analysis of the City's water needs through 2020, taking into account the purchase of water from Aquaria, the alleviation of pent-up demand, redevelopment within the City, continued conservation implementation, the potential needs of the Town of Whitman, and the capacity of Brockton's sources. In developing this plan, Brockton should consider existing data studies, including the April 2003 *Jones River Watershed Study* prepared by GZA for DCR. The study shall also evaluate the feasibility of releases to the Upper Jones River through a low-level outlet, as recommended by the GZA study. The Respondent submitted a "Comprehensive Water Management Plan" as required by ACO-SE-95-5005 and Special Condition #4 of Permit #9P-4-25-044.01 for MassDEP review and approval. MassDEP has not approved the Comprehensive Water Management Plan submitted by the Respondent.
12. MassDEP and the Respondent agree that the Comprehensive Water Management Plan needs to be updated and resubmitted to MassDEP for timely review and action so that MassDEP's final determination is not unreasonably withheld.

13. Chapter 91 License No. 4987 authorizes the City of Brockton to construct and maintain works to divert excess overflow water from Monponsett Pond in the Towns of Halifax and Hanson to Silver Lake in the Town of Pembroke with the following conditions: "The diversion of water to Silver Lake, including the prohibition against taking water when Monponsett Pond is below elevation 52.5 feet (amended to below elevation 52 feet by Chapter 237 of the Acts of 1981), shall be in strict conformity with the provisions of said Chapter 371 of the Acts of 1964 insofar as it lies within the ability of the licensee to do so, notwithstanding any construction details authorized hereby."

14. MassDEP's site inspections, data gathering and records review indicate that the Respondent is complying with the pond elevation, diversion restrictions on Monponsett Pond, as diversions to Silver Lake are only occurring when Monponsett Pond elevation is at least 52 feet or above.

15. Chap. 371 of the Acts of 1964-SECTION 8 states in pertinent part: "There shall be no diversion of water from Furnace Pond or from Monponsett Pond into Silver Lake, if, in the opinion of the department of public health, the diversion of such waters would endanger the public health."

16. The Massachusetts Department of Public Health (MDPH) has determined that if cyanobacteria (a.k.a., blue-green algae) is present in a water body at a level in excess of 70,000 cells per milliliter (cells/ml), MDPH recommends posting the water body with no swimming/no contact signage to avoid an endangerment to the public health from contact or ingestion of waters impacted by cyanobacteria in excess of the 70,000 cells/ml MDPH standard.

17. Duties and responsibilities attributed to MDPH under the Acts of 1964 are now under the authority of MassDEP in accordance with M.G.L. c. 111 §§ 159-160 and the Acts of 1975, Ch. 706 §184 granting DEP authority over inland waters and associated water supplies.

18. MassDEP has determined that a diversion from Monponsett Pond to Silver Lake would endanger public health if said diversion were to occur during a cyanobacteria bloom in Monponsett Pond that exceeds the MDPH standard of 70,000 cells/ml.

19. On October 15, 2016, the Respondent provided MassDEP with a letter that confirmed their practice – as officially endorsed by a vote of the Brockton Board of Water Commissioners on October 14, 2016 – to not divert whenever testing indicates there is a cyanobacteria bloom in West Monponsett Pond that exceeds the MDPH standard of 70,000 cells/ml.

20. MassDEP has determined that the Respondent is in conformance with its aforementioned stated practice not having diverted water from Monponsett Pond to Silver Lake whenever testing has indicated a bloom of 70,000 cells/ml or more exists in Monponsett Pond after October 15, 2016.

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

- A. Chapter 371 of the Acts of 1964-SECTION 9 states in pertinent part: "The city shall construct facilities at or near the present outlets of the aforesaid Furnace and Monponsett ponds in such a manner as to allow a minimum daily flow of three hundred thousand gallons from Furnace Pond, a minimum daily flow of nine hundred thousand gallons from Monponsett Pond to pass downstream at all times when water is being diverted..."

- B. MassDEP has determined that although the Respondent maintains an average daily flow in excess of nine hundred thousand gallons from Monponsett Pond to pass downstream during all diversionary periods, with a normal approximate average flow during diversionary periods of 1.5 million gallons per day (mgd), a minimum flow of nine hundred thousand gallons per day was not maintained at all times during January and March of 2016 when water was being diverted.
- C. Chapter 371 of the Acts of 1964-SECTION 8 states in pertinent part: "Notwithstanding the provisions of sections one hundred and sixty and one hundred and seventy-two of chapter one hundred and eleven of the General Laws, nothing in this act shall be construed as preventing the normal use of the aforesaid Furnace Pond and Monponsett Pond for bathing, boating, fishing and other purposes, nor shall the provisions of this act prevent the withdrawal of sufficient water for flooding or irrigation of cranberry bogs, nor shall the provisions of this act prevent the return flow of such flood waters from cranberry bogs to the aforesaid ponds." Chapter 91 License No. 4987 states in pertinent part: "Nothing in this license shall be construed as authorizing interference with the established right of any cranberry grower in said watershed to take water in a normal manner or to otherwise curtail activities preserved by the provisions of said Act." The License further states that it is "granted subject to all applicable Federal, State, County and Municipal laws, ordinances and regulations, and upon the express condition that this license may be modified or revoked by the Department of Public Works at any time after notice and hearing without claim for compensation therefore, upon evidence of failure to adhere to the provisions hereof."
- D. MassDEP has determined that West Monponsett Pond is impaired because excess nutrients related to land uses in the Towns of Halifax and Hanson - including cranberry cultivation, residential development, septic systems and stormwater runoff, and natural forested wetlands - have entered the Pond causing eutrophication and frequent cyanobacteria blooms. When cyanobacteria in Monponsett Pond exceeds the MDPH standard of 70,000 cells/ml, per MDPH recommendation, the Pond is posted for no contact/no swimming to protect public health, thus preventing its normal use. West Monponsett Pond frequently experiences cyanobacteria blooms in excess of the MDPH standard and is frequently posted to prevent swimming/bathing and direct contact.
- E. MassDEP has determined that although Brockton's diversions from East Monponsett Pond to Silver Lake result in no additional or excess nutrients entering Monponsett Pond - such excess nutrients representing the direct proximate cause of impairment - the diversions lessen the pond's nutrient absorptive capacity by reducing new water additions to West Monponsett Pond that otherwise would improve flushing and reduce stagnation. The stagnation and reduced flushing resulting from the East Monponsett Pond to Silver Lake diversions render West Monponsett Pond more susceptible to cyanobacteria blooms, thus preventing its normal use for bathing, boating, fishing and other purposes as provided for in Chapter 371 of the Acts of 1964.

22. Chapter 91 License No. 4987 requires placement of stop logs inside the Monponsett Pond diversion structure between the diversion intake chambers and the diversion pipe intake chamber to isolate the diversion pipe and closure valve to protect against unwanted flow entering the diversion pipe if the closure valve leaks or fails.

23. On November 3, 2016, MassDEP inspected Stump Brook Dam, the Monponsett Pond Diversion Building and apparatus, and the Monponsett Pond to Silver Lake diversion pipe terminus on the shores of Silver Lake. During the inspection MassDEP made the following observations:

- a. Monponsett Pond was several inches below the elevation necessary for diversions to occur in accordance with Chapter 237 of the Acts of 1981. The Monponsett Pond diversion pipe was closed with no active diversion from Monponsett Pond to Silver Lake occurring, in compliance with the requirements of Chapter 237.
- b. Flow was observed coming from the Monponsett Pond to Silver Lake diversion pipe and entering Silver Lake. As the diversion pipe was closed and the closure valve was intact with no excess leakage, MassDEP determined the substantial majority of flow exiting the Monponsett Pond to Silver Lake diversion pipe and entering Silver Lake resulted from groundwater infiltration and was not related to an ongoing Monponsett Pond diversion. Groundwater infiltration is common within underground piping systems and not a violation of the Respondent's Chapter 91 License.
- c. Although at the time of inspection the diversion pipe closure valve was intact with no excess leakage, stop logs were not in place to protect against unwanted flow entering the diversion pipe in the event of a valve leak or failure, in violation of the requirements of the Respondent's Chapter 91 License.

III. DISPOSITION AND ORDER

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

24. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

25. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

26. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event.

a. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.

b. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

c. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

d. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

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

27. Immediately upon the effective date of this Consent Order, the Respondent shall continue to not divert from Monponsett Pond to Silver Lake when there is a cyanobacteria bloom in Monponsett Pond that exceeds the MDPH standard of 70,000 cells/ml.

28. Immediately upon the effective date of this Consent Order, the Respondent shall continue implementation of its current practice of manually opening the Monponsett-to-Silver Lake diversion structure/apparatus to provide a lower water transfer rate (approximately 12 to 14 million gallons per day, which is approximately 50% of the maximum diversion rate) with the intended goal of pulling less water from West Monponsett to East Monponsett during diversions; provided however, this provision may be waived at the discretion of the Department should unanticipated environmental

conditions so warrant. This requirement shall remain in force until it is further evaluated as part of Resource Management Plan development (described below) and otherwise approved by MassDEP.

29. Within sixty (60) days of the effective date of this Consent Order, the Respondent shall complete installation of stop logs on top of the dam-like structures that separate the Monponsett Pond intake chambers from the diversion pipe intake.

30. Immediately upon the effective date of this Consent Order, the Respondent shall commence operating the Stump Brook Dam / Fish Ladder in a manner to ensure the following:

- a. At least 900,000 gallons per day (g/d) is leaving West Monponsett Pond and entering Stump Brook whenever Brockton is actively diverting from Monponsett Pond to Silver Lake in accordance with the requirements of Chapter 91 License 4987.
- b. The Stump Brook Dam Fish Ladder remains open and passable for migrating fish during the herring migration seasons in Spring and Fall of every year in accordance with the requirements of Chapter 91 License 4987.

31. The Respondent shall make immediate efforts to contact area cranberry growers who discharge agricultural return flows to West Monponsett Pond to coordinate Stump Brook Dam openings so that the Stump Brook Dam Fish Ladder and Sluiceway can be opened to the maximum feasible extent to coincide with releases of cranberry harvest and flood return flows to West Monponsett Pond/Stump Brook so that those return flows exit the Monponsett Pond system as quickly as possible so long as pond elevation supports flow over the Stump Brook Dam and Fish Ladder and out the Sluiceway. This requirement shall remain in force until it is further evaluated as part of Resource Management Plan development (described below) and otherwise approved by MassDEP.

32. Once Monponsett Pond reaches a level of 53.0' (+6 inches above zero elevation of 52.5' United States Coast and Geodetic Survey base), or June 1, 2017, whichever is earlier, the Respondent shall commence operating the Stump Brook Dam fish ladder gate in a manner to ensure at least 900,000 g/d is leaving West Monponsett Pond and entering Stump Brook at all times, unless the pond elevation cannot support 900,000 g/d with the fish ladder gate placed at its lowest elevation (approximately 51.8'); provided however, this provision may be waived at the discretion of the Department should unanticipated environmental conditions so warrant. This requirement shall remain in force until it is further evaluated as part of Resource Management Plan development (described below) and otherwise approved by MassDEP.

33. Within six months of the effective date of this Consent Order, the Respondent shall submit for MassDEP review and approval a proposed Final Scope of Work ("SOW") for preparation of a Resource Management Plan (the "Plan"), based on scientific data and evaluation, that will include recommended metrics and procedures for Silver Lake Diversions and Stump Brook Dam operations intended to improve Monponsett Pond's water quality and ecosystem while maintaining Brockton's drinking water supply system reliability. The Plan, at a minimum, shall include the following:

- a. Establishment of monthly Monponsett Pond elevation goals or some other metric on which to base Stump Brook Dam operating procedures to balance the needs of providing:

- Stump Brook flow
 - better flood control, including reduced need of flood control diversions to Silver Lake
 - improved flushing in West Monponsett Pond
 - fish passage
 - adequate water depth for bathing, boating, fishing and cranberry cultivation
 - impoundment to provide adequate water for Silver Lake diversions
- b. Research compilation to provide historic pond elevation information using available data from United States Geological Survey (USGS) and other agencies including, but not limited to, the 1923 c.91 license to the Hanson Cedar Company.
- c. Collection of flow data to correlate Silver Lake diversion rates with flow rates from West Monponsett to East Monponsett during diversions in Silver Lake.
- d. Performance of an evaluation to determine feasibility and effectiveness of seasonally adjusting flow out of Monponsett Pond to Stump Brook to increase spring flushing rates in West Monponsett Pond enough to reduce summertime nutrient levels and stagnation in West Monponsett Pond and potentially reduce the frequency of warm weather cyanobacteria blooms.
- e. Development of a Stump Brook Dam operating procedures manual based on the information and findings from completion of the requirements above in Paragraph 32 a through d.
- f. Development of a Silver Lake Diversion operating procedures manual based on the information and findings from completion of the requirements above in Paragraph 32 a through d.
- g. Develop a recommended actions list with a preliminary feasibility assessment of additional measures that could be performed by others, including but not limited to, the Towns of Halifax and Hanson, area cranberry growers and residents to improve water quality in Monponsett Pond; such as: programs to upgrade septic systems; improved storm-water management; installation of a control structure between East and West Monponsett; utilization of alternative procedures and/or technologies; and, chemical treatment.
34. Prior to submitting the proposed Final SOW to MassDEP, the Respondent shall release a Draft SOW for public comment and conduct at least one public meeting to discuss the SOW and gather public input. The Draft SOW release for public comment and meeting announcements shall be posted in the Environmental Monitor and properly advertised in the Brockton Enterprise and the Patriot Ledger with copies of the Draft SOW made available in each respective community library or designated repository.
35. Within twenty-four months of the effective date of this Consent Order, the Respondent shall submit for MassDEP review and approval a proposed Final Resource Management Plan and Implementation Schedule developed in accordance with the Resource Management Plan SOW as approved by MassDEP.

36. Prior to submitting the proposed Final Resource Management Plan and Implementation Schedule to MassDEP, the Respondent shall release a Draft Resource Management Plan for public comment and conduct at least one public meeting to discuss the Resource Management Plan and gather public input. The Draft Resource Management Plan release for public comment and meeting announcements shall be posted in the Environmental Monitor and properly advertised in the Brockton Enterprise and the Patriot Ledger with copies of the Draft Resource Management Plan made available in each respective community library or designated repository.
37. Within six months of MassDEP's approval of the Final Resource Management Plan and Implementation Schedule, the Respondent shall commence implementation of the MassDEP approved Resource Management Plan and Implementation Schedule.
38. Modifications to the Final Resource Management Plan and Implementation Schedule, should water quality in Monponsett Pond improve or the Respondent otherwise deem them necessary, are subject to a MassDEP timely review and approval so that a MassDEP determination is not unreasonably withheld.
39. Within six months of the effective date of this Consent Order, the Respondent shall submit for MassDEP review and approval a proposed SOW to update the Comprehensive Water Management Plan to meet the requirements established by Special Condition #4 of Permit #9P-4-25-044.01 and in consideration of the Resource Management Plan being developed in accordance with this Consent Order.
40. Within twenty-four months of the effective date of this Consent Order, the Respondent shall submit for MassDEP review and approval an updated Comprehensive Water Management Plan that meets the requirements established by Special Condition #4 of Permit #9P-4-25-044.01 and is consistent with the Final Resource Management Plan approved by MassDEP.
41. Until otherwise approved by MassDEP, the Respondent shall continue to operate in a manner such that the twelve (12) month running average of water pumped to the Respondent's water distribution system must not exceed 11.3 million gallons per day (mgd) or 110% of the MassDEP approved system safe yield, whichever is larger. The Respondent shall continue to submit monthly reports to MassDEP showing the twelve (12) month running average of water from all sources, raw and finished. Each monthly report is due on the 15th day of the month following the month for which the report is made. The Respondent will continue to operate such that exceeding 11.3 mgd or 110% of the MassDEP approved system safe yield shall constitute a petition for a declaration of a state of water supply emergency pursuant to MGL Chapter 21G, Section 15 and 310 CMR 36.40. By operation of this Consent Order, such a request shall be deemed to be accepted and may be acted upon by MassDEP, if needed, depending on availability and use of the Respondent's water sources – such as Aquaria - not included in the MassDEP approved safe yield limitation.
42. Unless submitted via eDEP or except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Bureau of Water Resources
MassDEP

20 Riverside Drive
Lakeville, MA 02347

43. Such notices, submittals and other communications shall be considered submitted by Respondent three (3) days following mailing to MassDEP.
44. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
45. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
46. Respondent is a Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B, as applicable.
47. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.
48. This Consent Order may be modified only by written agreement of the parties hereto.
49. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
50. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.
51. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.
52. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has

fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

53. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates Paragraphs 26 through 43 inclusive of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the an amount of \$250.00 per day for the first 30 days and \$500.00 thereafter per day for each day, or portion thereof, each such violation continues.

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

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

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

57. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to Silver Lake, the Silver Lake water treatment facility, Monponsett Pond, and Stump Brook Dam for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

58. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

59. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

In the Matter of: City of Brockton

ACO #:00001010

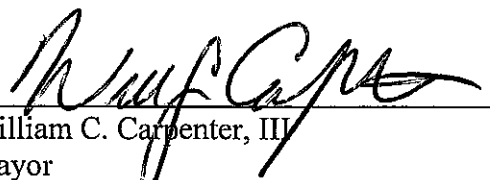
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60. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

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

Consented To:

City of Brockton

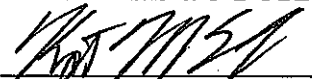
By: 
William C. Carpenter, III
Mayor
Federal Employer Identification No.: 04-6001-382

Date: 1/30/17

As approved by the Brockton City Council

Date: _____


APPROVED AS TO FORM:

By: 
Katherine McNamara Feodoroff
Mead, Talerman & Costa, LLC
720 Main Street, Ste. 1F
Millis, MA 02054

Date: 1/23/17

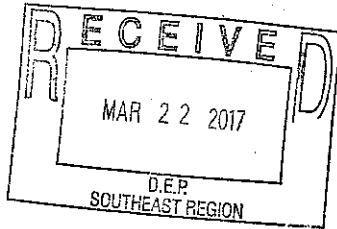
Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
for Millie Garcia-Serrano
Regional Director
MassDEP
20 Riverside Drive, MA 02367

Date: 3-22-17

84



In City Council, February 27, 2017

Ordered:

That the City Council authorize the Mayor to execute the Administrative Consent Order ("ACO") issued by the Massachusetts Department of Environmental Protection (MASSDEP) relating to Monponsett Pond.

Timothy J. Cruise
Councillor
Timothy J. Cruise
Ward 1 Councillor

IN CITY COUNCIL

February 27, 2017
READ AND REFERRED TO STANDING
COMMITTEE ON finance

Anthony J. Zeali
CLERK

In City Council March 13, 2017

Adopted by a roll call vote taken by "yeas" and "nays"; ten members present with nine voting in the affirmative. Councillor Beauregard voting in the negative. Councillor Monahan absent.

Anthony J. Zeali
City Clerk

SENT TO MAYOR FOR APPROVAL

March 16, 2017
APPROVED

Bill Capra
MAYOR