

The Consent Order

What is a Consent Order?

A Consent Order or Administrative Consent Order with Penalty (ACOP) is a legally binding and enforceable document between agencies. Instead of obtaining a docket number, a law firm and appearing in a court room, an ACOP is an enforceable contract between 2 agencies when 1-to-many regulations are violated.

It gets your attention, and they are not fooling around.

ACOPs can vary by jurisdiction. The goal is to work toward dispute resolution. It has the same effect as a court order. It simply occurs in a building other than a courthouse. It can be escalated and enforced by a court and/or a higher-level agency.

Specific to Northfield, the Consent Order (ACOP) is state mandated. When or if the Town of Northfield does not comply, the State has multiple remedies.

First, the financial remedy as defined in the ACOP. Secondly, and one we never want to go to, is that the Consent Order can be bumped up to the Federal Level, or EPA, Environmental Protection Agency. At that point, Washington is involved, the local voice is lessened and supportive expertise, and if needed, the Department of Justice can become activated.

Avoid at all costs. <https://definitions.uslegal.com/c/consent-order/>

The Value of a Consent Order:

“In the environmental arena, a consent order is extremely useful because parties can reach an agreement with the government to address liability without having to legally admit responsibility for causing the problem. In addition, it ends transaction costs of the business arising from continued fighting with the government. More importantly, the party entering into the consent order with the government can, in many instances, receive liability protection for future claims brought by the government (lawsuits or demands to clean up property).”

<https://www.periconi.com/blog/2018/04/the-power-of-a-consent-order-and-a-consent-decree/>

As of September 2023, the Dept. of Env. Protection estimated that there are approximately 11 ACOP's in the State of Massachusetts.

What is the Department of Environmental Protection (DEP)?

We covered a brief history in NewsLetter Edition 01.

Some states call the agency the DEP or DEQ or even DEC. Department of Environmental Quality, or Commission. They are all the same.

They protect drinking water from stupid humans. (This is why I do not write for greeting card companies.) The Massachusetts DEP has a professionally written Mission statement on the webpage below.

<https://www.mass.gov/orgs/massachusetts-department-of-environmental-protection>.

The Timeline – Understanding what happened.

Deferred maintenance, loss of skilled staff throughout the years, staff turnover, commission turnover, changing regulations, and climate change have all contributed to this urgent project.

The shelf life on plant equipment is approximately 20 years. Most of the Northfield plant equipment is 40-50 years old. There are structural and capacity violations and personnel safety violations.

There is no one person, one event, one regulation, one anything, that caused all this.

The build up to the Consent order:

- Feb 13, 2018 Inspection of Plant – violations identified and documented.
- Aug 15th 2019 Inspection of Plant – violations identified and documented.
- 2018-2019 Prickett Engineering addressing the violations. Cost of report ~\$121,000
- 2019 -2020 – No movement or communication from Town to the DEP
- 2020 – Dept of Env. Protection issues the Town of Northfield a Notice of NonCompliance (aka a NON) as a result of violations and no communication.
- May 2020 – Isaac Golding joins the plant as the Chief Operator.
- July 2020 – Isaac picks up the lack of correspondence and begins DEP Technical Assistance correspondence with the DEP.
- Aug-Nov 2020 – Isaac and DEP communicate and work on technical assistance.
- April-May 2021 – DEP issues the Consent order to escalate the upcoming project and needs.
- May 2021- Tom Walker comes out of Sewer retirement and is elected to the Commission.
- Nov 2021 – Karen Boudreau submits an email to join the Commission.
- The work begins to stabilize the wonky budget math, the Consent order status, grant research, and getting to a better place.

The Consent Order Contents:

I Requested the Consent order and 2 inspection reports to be posted to the Sewer Commission NewsLetter Folder on the Town Website.

In a nutshell, the Consent Order contains:

- A Welcome Letter.
- The Parties involved. The DEP and the Town of Northfield, page 1.
- Supporting timelines of actions/inactions.
- Page 5 and 6 – Disposition and Order.
- Page 9 begins the fines. Per item per day.
 - Day 01-15 20 violations, at 100.00/day, the cost per day is \$2000.00.
 - Day 16-30 20 violations, at 250.00/day, the cost per day is \$5000.00.
 - Day 31+ 20 violations at 500.00/day, the cost per day is \$10,000.00.
- There is a sentence which equates to ‘You will pay penalties and then still pay for upgrades.’”

Page 11 – If we ignore, decline, dispute, argue, the fines can triple.

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to 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 Sewer Plant and Commission currently have 2 billing cycles per year. Those cycles harvest approximately \$170,000 per cycle.

Worst case scenario: For the sake of argument, the Town of Northfield debate and refuse to pay. At \$30,000/day, the plant becomes financially defunct in 5 days.

Can I read the Consent Order?

Yes, it is located here:

<https://www.northfieldma.gov/board-sewer-commissioners/pages/announcementsnewsletter>

Can We Appeal?

14. 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.

Why is the DEP mean to us?

Unfortunately, some statements like this have surfaced. Emotionally frightening statements only escalate an already tough situation and are not a good approach. Don't pour gas on a fire.

If the DEP wanted to be really mean, they would make us pay the up-front cover charge of \$6610.00, hold us to the 30-day, 60-day requirements and also escalate the Consent order to a Federal (EPA) Level.

Once the EPA has the Consent order, the proceedings go to the Department of Justice.

But they haven't. Instead, the current Commission reached out to them, offered emails and cell phones numbers (primarily mine 😊) and instructed the DEP to communicate whenever they want. One caveat: I go to bed at 9 pm.

The DEP has been helpful, courteous, informative, and quick in replies. In the beginning of August, they worked diligently to try to get us State Revolving Funds money.

The Agency that rightfully and firmly warned us jumped in and is trying to help us.

But we cannot become complacent.

The Roles of the Commissioners.

- We are a 3-member elected board.
- We are a Town Department with Town Employees and Town Board.
- We manage the \$380,000 operational budget on a biweekly automated process.
- We are assisted by a fantastic team in the Treasure's, Town Clerk, Assessors offices and the Highway Department.
- The Chief Operator manages the budget on a daily basis.
- We elect a Board Chair yearly, after the May election.
- Our Organizational chart exhibits us reporting to a Town Administrator, and the DEP as a Stakeholder.
- We report to the DEP on a weekly basis.
- We report to the Town Accountant firm of Hilltown Accounting and have a monthly reconciliation process.
- We are responsible to the Department of Revenue.
- We are responsible to the Department Labor for employees and 30B project requirements.
- We work with the departments to update Bylaws.
- We seek to hire additional personnel for the plant.
- We interview and recommend any new hires to the Town Administrator and the Select Board.
- The Town Administrator performs the background checks.
- The Select Board either approves or denies any new hiring recommendation.
- We assist the Chief Operator with project setting and budget review.
- We currently assist the Chief with project management and other back-office tasks.
- We remove cultural and political stonewalls to assist the Chief.
- We have open meetings approximately every 2 weeks.
- We receive minimal yearly compensation of \$660.11.

Going forward.

Come to our tours, coffee hours, and read our NewsLetters.

Learn, grow, plan with us. We are in this together.