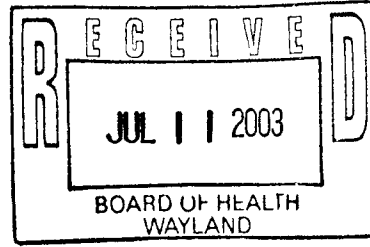




COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Metropolitan Boston – Northeast Regional Office

MITT ROMNEY
 Governor

KERRY HEALEY
 Lieutenant Governor



ELLEN ROY HERZFELDER
 Secretary

EDWARD P. KUNCE
 Acting Commissioner

March 6, 2003

Donald Hollender, Superintendent
 Town of Wayland, Water Department
 41 Cochituate Road
 Wayland, Massachusetts 01778

RE: **WAYLAND** – Public Water Supply
 Administrative Consent Order
 ACO-NE-02-F001

Dear Mr. Hollender:

It has come to our attention that the final signed and fully executed original of the Administrative Consent Order has not been provided to you. Please find enclosed one (1) copy of the original Consent Order. The Department looks forward to working with the Town of Wayland as it proceed through this process.

If you have any questions regarding this matter, please contact Zachary Peters at (978) 661-7736.

Very truly yours,

Madelyn Morris

Madelyn Morris
 Deputy Regional Director
 for Resource Protection

RECEIVED
 WAYLAND WATER DEPT.

MAR 12 2002

41 COCHITUATE ROAD
 WAYLAND, MA 01778

MM/zap
 Encl.

cc: Duane LeVangie, DEP, Water Management, Boston
 Michele Drury, DEM, OWR, 251 Causeway Street, Suite 700, Boston, MA 02114

This information is available in alternate format. Call Aprel McCabe, ADA Coordinator at 1-617-556-1171.

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

In the Matter of)
The Town of Wayland)
_____)

Administrative Consent Order
ACO-NE-02-F001

I. The Parties

1. The Department of Environmental Protection (the "Department" or "DEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to G.L.c. 21A, sec. 7 with a principal office located at One Winter Street in Boston, Massachusetts and a northeast regional office located at 205A Lowell Street in Wilmington, Massachusetts, 01887.

2. The Town of Wayland ("Town" or "Wayland") is a political subdivision of the Commonwealth of Massachusetts having its principal place of business and mailing address at 41 Cochituate Road in Wayland, Massachusetts 01778. The Town operates a public water system PWSID# 331500 that provides potable water to its customers.

II. Statement of Facts and Law

3. The Department implements and enforces the Massachusetts Water Management Act, G.L.c. 21G and the regulations promulgated thereunder at 310 CMR 36.00 et seq. The Department has authority under G.L.c. 21A, sec. 16 and the regulations promulgated thereunder at 310 CMR 5.00 to assess civil administrative penalties to persons who violate its regulations.

4. Pursuant to the Water Management Act, G.L.c. 21G, sec. 7, the Department promulgated the Water Management Act Regulations, 310 CMR 36.00.

5. The Town withdraws water from the Concord River Basin.

6. The Water Management Act, G.L.c. 21G, sec. 5, provides that each person making an existing withdrawal in excess of the threshold volume shall file a registration statement on or before January 1, 1988.

7. The Water Management Act, G.L.c. 21G, sec. 4, provides that the threshold pursuant to section five and seven shall be one hundred thousand gallons per day.

8. The Water Management Act, G.L.c. 21G, sec. 2, defines an existing withdrawal to mean the average volume of water withdrawn from a particular water source during the five years prior to January 1986 provided that no person shall be deemed to have an existing withdrawal unless he has filed a registration statement with the Department in accordance with the provisions of sections five and six and the regulations adopted thereunder.

9. Pursuant to the Water Management Act, G.L.c. 21G, sec. 5, the Town filed a registration statement on December 30, 1987 indicating that it withdrew water from the following seven wells in the Concord Basin. Happy Holly #1, Source Code, 331-5000-03G, Old Connecticut Path; Happy Holly #2, Source Code 331-5000-04G, Old Connecticut Path; Meadowview Well, Source Code 331-5000-05G, Meadowview Road; Campbell Road Station, Source Code 331-5000-02G, Campbell Road; Baldwin Pond Well #1, Source Code 331-5000-01G, 101 Old Sudbury Road; Baldwin Pond #2, Source Code 331-5000-01G, 101 Old Sudbury Road; and Baldwin Pond #3, Source Code 331-5000-06G, 101 Old Sudbury Road. The registration statement further indicated that the Town withdrew an average of 1.66 million gallons per day during the registration period. The Department accepted this registration statement on February 23, 1989.

10. In 1991 and 1992, the Town exceeded its registered withdrawal by an average of more than 100,000 gallons per day. In 1991, the Town withdrew an average of 1.81 million gallons per day. In 1992, the Town withdrew an average of 1.81 million gallons per day. In 1993, the Town was unable to report the amount of water it withdrew from the Concord Basin because the master meters were broken.

11. In 1993 or 1994, the Town began withdrawing an average of more than 100,000 gallons per day from another source in the Concord Basin, the Chamberlain Well, Source Code 331-5000-07G, located off Moore Road. The Town commenced this withdrawal without applying for a Water Management Act Permit. Since 1994, the Town has continued to withdraw an average of more than 100,000 gallons per day from the Chamberlain Well.

12. Subsequent to the addition of the Chamberlain Well, the Town continued to exceed its registered volume by more than an average of 100,000 gallons per day. In 1994, the Town withdrew an average of 1.89 million gallons per day. In 1995, the Town withdrew an average of 2.02 million gallons per day. In 1996, the Town withdrew an average of 1.92 million gallons per day.

13. In 1997, the Department renewed the Town's registration statement. As a result of this renewal, the Town continued to be authorized to withdraw an average of 1.66 million gallons per day from the sources located in the Concord Basin and listed on the registration station

14. Subsequent to the 1997 renewal, the Town continued to exceed its registered volume by more than an average of 100,000 gallons per day. In 1997, the Town withdrew 2.02 million gallons per day. In 1998, the Town withdrew an average of 1.77 million gallons per day. In 1999, the Town withdrew an average of 2.16 million gallons per day. In 2000, the Town withdrew an average of 2 million gallons per day.

15. The Water Management Act, G.L.c. 21G, sec. 7, provides that no person may make a new withdrawal of more than the threshold amount from a withdrawal point or points within the Commonwealth unless such person obtains a permit from the Department.

16. The Water Management Act, G.L.c. 21G, sec. 2, defines a new withdrawal as any withdrawal that is not an existing withdrawal.

17. The Water Management Act Regulations, 310 CMR 36.03, define the threshold volume to mean an average daily volume of 100,000 gallons for any period of three consecutive months.

18. The Water Management Act Regulations, 310 CMR 36.17, provide that each person prior to making a new withdrawal from a withdrawal point or points within the Commonwealth in excess of the threshold volume from a water source shall obtain a permit. The Water Management Act Regulations, 310 CMR 36.17(3), provide that withdrawal volumes which exceed a registered withdrawal by more than the threshold volume require a permit.

19. By exceeding its registered volume by an average of more than 100,000 gallons per day from 1991 through 2000, without applying for or obtaining a Water Management Act Permit, the Town violated the Water Management Act, G.L.c. 21G, sec. 7, and the Water Management Act Regulations, 310 CMR 36.17(1) and (3).

20. By withdrawing more than an average of 100,000 gallons per day from the Chamberlain Well without applying for or obtaining a Water Management Act Permit, the Town violated the Water Management Act, G.L.c. 21G, sec. 7 and the Water Management Act Regulations, 310 CMR 36.17(1) and (3).

21. In 2000, the Town applied for a Water Management Act Permit that would authorize the withdrawal from the Chamberlain Well. In conjunction with this permit application, the Town took a number of actions aimed at reducing the volume of water withdrawn from its wells. These actions included the completion of a water audit in October 2001, a leak detection survey that identified a number of significant leaks, the implementation of a program to calibrate master meters on an annual basis, a water rate increase, implementation of mandatory odd/even water bans, and increased penalties for violations of these water bans.

22. In 2001, the Town continued to exceed its registered volume by more than an average of 100,000 gallons per day. In 2001, the Town withdrew an average of 2.02 million gallons per day.

23. It is good practice for a public water supplier to keep its unaccounted for water to 10% or less. The Town's unaccounted for water has consistently exceeded that percentage. Unaccounted for water was 36% in 1991, 44% in 1992, 34% in 1993, 22% in 1994, 40% in 1996, 14 % in 1997, 24% in 1998, 31% in 1999, 34% in 2000, and 21 % in 2001.

24. It is good practice to keep per capita water use between 65 and 70 gallons per day. In Wayland per capita water use substantially exceeds these targets. In 1997, per capita water use was 89 gallons per day. In 1998 per capita water use was 87 gallons per day. In 1999, per capita water use was 99 gallons per day. In 2000, per capita water use was 82 gallons per day. In 2001, per capita water use was 99 gallons per day.

25. Wayland's high per capita use is caused at least in part by the Town's high seasonal water use. In 1999, total withdrawals for the months of June, July and August were substantially more than twice the withdrawals for the months of January, February, and March. In 2001, the total withdrawals for the months of May, June, July, August, and September were twice the withdrawals in March.

26. In August 2002, the Department issued a Water Management Act Permit that allowed the Town to withdraw water from the Chamberlain Well. The Water Management Act Permit contained an interim allocation that increase the total volume that the Town was authorized to withdraw to an annual average of 1.77 million gallons per day, an average of .11 million gallons per day above the average volume of 1.66 million gallons per day authorized in the registration statement. In issuing this permit, the Department determined that the Town should be able to

come into compliance with the Water Management Act, if it reduces its per capita water use to 80 gallons per day and its unaccounted for water to 15%. In issuing this permit, the Department informed the Town that it will revisit the issue of the appropriate withdrawal volume when the Town applies to the Department of Environmental Management Office of Water Resources for a water needs forecast.

27. Pursuant to the Water Management Act, G.L.c. 21G, sec. 14, and the Water Management Act Regulations, 310 CMR 36.43, the Department may issue such orders as it deems necessary to aid in the enforcement of the Act and the Regulations. Such orders may require any person to carry out activities necessary to bring such persons into compliance.

III. Disposition and Order

28. 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 expend additional time and resources litigating the allegations set forth above. The Town 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. Nothing in this Consent Order shall 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 additional order or to seek any other relief or exercise any equitable right of the Department to pursue any other claim, action, suit, cause of action or demand which the Department 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. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of the Department with respect to any subject matter not covered by this Consent Order.

29. The Department hereby determines and the Town hereby agrees that the deadlines set forth in this Consent Order constitute reasonable times for coming into compliance with the Water Management Act and the Water Management Regulations.

30. In addition to being a Consent Order, this instrument is also a Notice of Noncompliance issued pursuant to G.L.c. 21A, sec. 16 and 310 CMR 5.00 for the violations cited in this Consent Order.

31. On or before December 31, 2002, the Town shall complete a comprehensive leak detection survey of its entire distribution system. Thereafter, the Town shall perform a leak detection survey of its entire distribution system every two years. In addition, whenever the volume of unaccounted for water is greater than ten per cent or whenever the volume of unaccounted for water increases by 5% as reported in the annual statistics for the prior calendar year, the Town shall conduct a leak detection survey of its entire distribution system. The Town shall measure or accurately estimate water used for bleeders on the distribution system, flushing and/or meter calibration. For the purpose of conducting a leak detection survey as required herein, the volume of unaccounted for water used to trigger a leak detection survey shall not include water used for bleeders, flushing and/or meter calibration. The volume of unaccounted for water and the volume for bleeders flushing and/or meter calibration and the method of measurement or estimation shall be reported to the Department along with the annual statistical report. Upon completion of each leak detection survey required by this paragraph, the Town shall repair any leaks identified as a result of that survey or otherwise within seven days of discovery. On or

before December 31 of any calendar year in which a leak detection survey takes place, the Town shall submit to the Department for its review and approval a report detailing the leak detection survey, any leaks uncovered as a result of that survey or otherwise and any leaks fixed as a result of the survey or otherwise and the estimated water savings expected as a result of the repairs.

32. On or before December 31, 2002, the Town shall submit to the Department for its review and approval a written proposal including a plan and schedule for reducing per capita water use and seasonal water use. At a minimum, the plan shall include the following: retrofit of all public buildings with low flow devices, the provision of low flow devices to consumers at cost, enactment, implementation and enforcement of a bylaw regulating the use of automatic sprinklers and the clearing of land for and maintenance of lawns, a program to reduce the volume of water used to irrigate public land including parks and fields used for recreation, adoption of revised outdoor water use restrictions that are consistent with the work of the Drought Task Force, the Water Resource Commission and the Department of Environmental Management Office of Water Resources, implementation of these revised outdoor water use restrictions, public education, and evaluation of further changes in the rate structure. In preparing the plan, the Town shall evaluate measures taken by other communities to reduce per capita and seasonal water use. Thereafter, the Town shall implement the plan as approved by the Department in accordance with the schedule approved by the Department. On or before June 30 and December 31 of each year beginning June 30, 2003, the Town shall submit a written report to the Department detailing all actions it took in the past six months to reduce per capita water use and seasonal water use including without limitations all actions to enforce the revised outdoor water use restrictions and all such actions it plans to take during the next six months. If the Town's unaccounted for water exceeds 15% or per capita water use exceeds 80 gallons per day, the December 31 report shall explain the reasons for the exceedance and include a proposed a plan and schedule for further reducing per capita water use and unaccounted for water through the use of additional water conservation measures. Possible water conservation measures include without limitation the use of cisterns for outdoor watering in lieu of treated drinking water and the establishment of a water bank. Thereafter, the Town shall implement the plan and schedule as approved by the Department. Failure to implement the plan and schedule as approved by the Department shall be a violation of this Consent Order.

33. On or before January 30, 2005, the Town shall submit to the Department of Environmental Management Office of Water Resources a request for a water needs forecast. The request shall include the following information for the years 2002, 2003, and 2004: (a) water use information based on actual metering; a break down of water use into residential, non-residential and unaccounted for categories, and an estimate of the service population. A copy of this request shall be submitted to the Department at the same time.

34. The Department is authorized to issue this Consent Order pursuant to G.L.c. 21G, sec. 14 and 310 CMR 36.43, G.L.c.21A, sec. 16 and 310 CMR 5.00.

35. The Town shall allow Department personnel and its authorized representatives to enter and inspect the Town's facilities at reasonable times without notice for the purpose of investigating, sampling or inspecting any records, condition, equipment, practice or property relating to activities subject to this Consent Order and at all times as necessary to protect the public health, safety or the environment.

36. This Consent Order shall be binding on the Town, its officers, employees, agents, successors, heirs, assigns, consultants, and contractors. The Town shall not violate this Consent Order and

shall not allow or suffer its officers, employees, agents, successors, heirs, assignees, consultants or contractors to violate this Consent Order. A violation of this Consent Order by any of the foregoing shall be a violation by the Town.

37. The Town shall pay stipulated penalties to the Commonwealth of \$1000 a day for each day of each violation of a provision of this Consent Order. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day that the Town corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified the Town of a violation or act of noncompliance. The payment of stipulated penalties shall not alter in any way the obligations of the Town to complete performance as required by this Consent Order. The Town shall pay the stipulated penalties due under this paragraph within thirty days of a written demand from the Department.

38. The Department may demand a stipulated penalty of \$10,000 for each calendar year beginning 2003 that the Town's average annual withdrawal exceeds 1.87 million gallons per day. The Town shall pay the \$10,000 penalty authorized by this paragraph within thirty days of a written demand from the Department.

39. The Town shall pay all penalties due under this Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. The Town shall clearly print the file number and the Federal Employer Identification No. on the face of the payment and shall mail it to: Commonwealth of Massachusetts, Department of Environmental Protection, Commonwealth Master Lockbox, Box 3284, Boston, MA 02241. The Town shall deliver a copy of the payment instrument to Madelyn Morris, Deputy Regional Director, Bureau of Resource Protection, Northeast Regional Office, Department of Environmental Protection 205A Lowell Street, Wilmington, MA 01887.

40. In the event that the Town fails to pay in full any penalty on or before the date due under this Consent Order and in the manner and form required by this Consent Order, the Town shall pay to the Commonwealth three times the amount of the penalty together with costs plus interest on the balance due from the date that the penalty became due and attorney's fees including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in G.L.c. 231, sec. 6C. Payment of all penalties due under this Consent Order is necessary for the Town to be deemed to be in compliance.

41. If an event occurs which causes or contributes or has the potential to cause or contribute to a delay in achieving in achieving compliance with a requirement of this Consent Order, the Town shall notify the Department in writing within seven days after the date of such event. This notice shall describe in detail: (a) the reason for and the anticipated length that the noncompliance is expected to persist; (b) the measures taken and to be taken by the Town to minimize the noncompliance; and (c) the timetable by which such measures will be implemented. The Town shall adopt all reasonable measures to avoid and minimize any noncompliance. Failure of the Town to comply with the notice requirements of this Paragraph shall render Paragraph 42 void and of no effect as to the particular incident involved and shall constitute a waiver of the Town's right to request an extension of time for its obligations based on the incident.

42. If the Department determines that a delay has been caused by an event beyond the reasonable control of the Town, the Department may extend the performance date in question for a period of

time equal to the delay caused or contributed to by the event. Events for which the Department may extend performance deadlines include: (a) acts of God; (b) acts of war; (c) unanticipated delays due to accidents, strikes, freight embargoes, or other work stoppages; (d) flood, fire, extreme weather conditions or other natural disasters; and (e) delay in obtaining permits and/or approvals from state, local or federal authorities required to comply with the terms and conditions of this Consent Order, provided, however, that the Town demonstrates to the satisfaction of the Department that best efforts were used to obtain such permits or approvals. Actions of the Town's officers, employees, agents, consultants, contractors, or subcontractors, shall not be acts beyond the control of the Town. Unanticipated or increased costs or expenses associated with the implementation of the actions required by this Consent Order or changed financial circumstances shall not serve as the basis for changes in this Consent Order or extensions of time for the performance of the actions required under this Consent Order and shall not constitute force majeure events. Performance of the obligations required under this Consent Order is not conditioned on the receipt of any federal or state grant or loans and will not be excused by the lack of any federal or state grant funds or loans. If the Department determines that a delay has been caused by an event beyond the reasonable control of the Town, the Town shall not be required to pay any stipulated penalties for the period of delay due to such event.

43. This Consent Order may be modified only by the written agreement of the parties. The Town may not assign its obligations under this Consent Order.

44. Each under signed representative hereby certifies that he or 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 this Consent Order.

45. This Consent Order shall take effect on the date that it is signed by the Department.

Consented to on behalf of the Town of Wayland:

By Donald W. Hollender

Typed Name Donald W. Hollender

Title Superintendent

Date 8/30/02

FEIN No. _____

Issued on behalf of the Department of Environmental Protection

By Madelyn Morris

Typed Name Madelyn Morris

Title D.R.D.

Date 9/3/02