

An Explanation of the
Second Amended
Judgment: Cohasset's
Wastewater Disposal
Obligations

January 17, 2012

Presented by Deutsch Williams

Outline of Presentation

- The Injunction against the town
- The Little Harbor Project
- What happens if the Town completes the Little Harbor Project on Time
- What happens if the Town fails to complete the Little Harbor Project on time
- Court Imposed Time Line
- Options available to town

Court Injunction Against Cohasset

The town is subject to a court ordered injunction:

- Para 6: *“The injunctive provisions of this Final Judgment shall apply to and be binding upon the defendant town, its departments, boards, agencies, officers, employees, agents, successors and assigns and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment”*
- Para 7: *“The town acknowledges that any violation of this Final Judgment may be cause of its being adjudged in contempt of court”.*
- Para 35: *“The town shall to the Commonwealth stipulated penalties for each day of each violation of the requirements of this Final Judgment in accordance with the following:
1st through 30th day..... \$1000
31st through 90th day\$1500
91st through 120th day\$2000
... All stipulated penalties shall be paid without demand from the Commonwealth, before the Fifteenth (15th) day of the month following that in which the violations first occurred, by means of a certified check payable to the Commonwealth of Massachusetts and delivered to the Office of the Attorney General...”*

Overview of Injunction

The Second Amended Judgment requires the Town to present studies and evaluations to the Commonwealth and to the United States to bring the town into compliance with all applicable federal and state laws applicable to wastewater treatment and disposal.

These studies (Para 13(g)): *“shall analyze the need*

- *to address inadequate subsurface disposal systems in the town, and*
- *propose critical areas for connection to the Town sewer system, including the areas that previously were recommended to be connected to the sewer system in the report to the town ... dated May 31, 1979.”*

- *“If the town does not propose connecting all the areas to the town sewer system ... then the town must develop a draft wastewater management plan for DEP’s review and approval to ensure the proper operation and maintenance of subsurface sewage disposal systems in unsewered areas of the town. “*

- *“The Draft Wastewater Management plan shall include a program for periodic Title 5 inspections... and upgrade of all failing subsurface sewage disposal systems in priority areas of the town”*

33 Years of History

- **Lawsuit:** November 1979, Commonwealth of Massachusetts sued the Town of Cohasset for alleged violations of the Massachusetts Clean Waters Act, G. L. ch. 21, s. 26-53.
- **Agreement for Judgment:** Lawsuit was resolved by an Agreement for Judgment dated February 13, 1980. On February 14, 1980 a special town meeting approved the signing of the Agreement for Judgment by the Board of Selectmen of the Town.
- **Amended Final Judgment:** On October 25, 1994, another special town meeting approved the signing of an Amended Final Judgment by the Board of Selectmen of the Town. The Amended Final Judgment was entered by the Court on November 3, 1994.
- **Second Amended Judgment:** On April 22, 1997 the court entered the Second Amended Judgment upon consent of the town and the Commonwealth.
- **First Modification:** On December 21, 1998, the Court entered an order modifying the Second Amended Judgment.
- **Second Modification:** On October 12, 2006 by agreement of counsel, the Court allowed a Joint Motion to further modify the Second Amended Final Judgment.

Limitations on New Connections

The Injunction places tight limitations on new sewer connections.

Para 46: "Beginning upon entry of the Final Judgment and continuing until the System is fully operational in accordance with this Final Judgment, the Town shall not authorize or allow

- *any new connections,*
- *any increase in flow from existing connections or*
- *extensions of its sewer system*

except those for which the Town Board of Health has found and certified to DEP in writing, or DEP has itself determined, are necessary to abate an imminent hazard to public health or the environment caused by inadequate sewage disposal.

Notwithstanding the foregoing, the Town may authorize a limited number of new connections to its sewer system not to exceed 15,000 gallons in the aggregate based upon a one-time 15,000 gallon flow credit for I/I removal work that the Town completed in 1996."

Required Wastewater Management Plan

By now, every subsurface disposal system in priority areas should have been inspected at least twice:

- First inspection: 1997-2004.
- Second inspection: 2005-2012.

Para 14(c): *“by May 30, 1997, the town shall commence implementation of the Final Wastewater Management Plan approved by DEP...”*

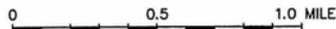
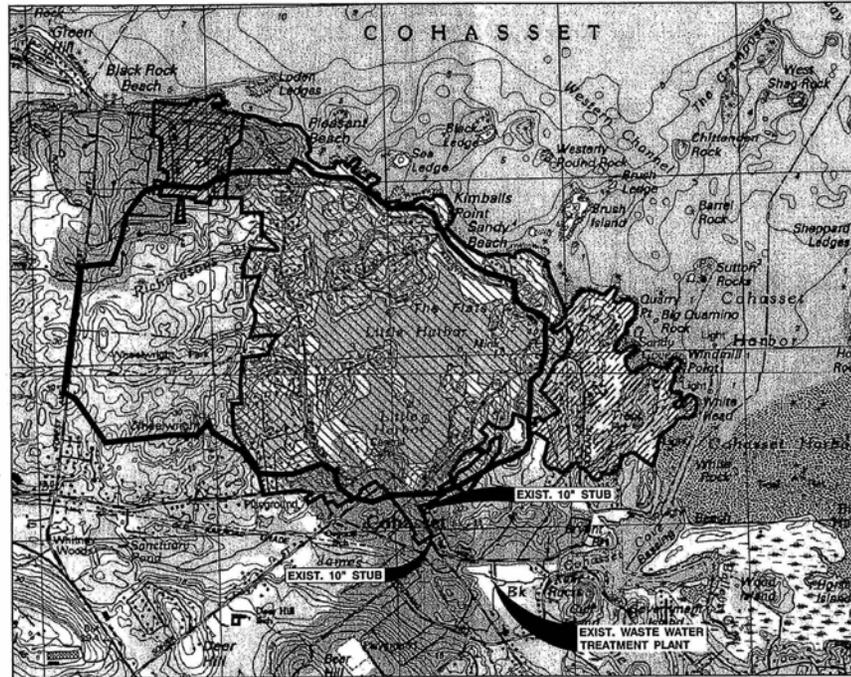
Para 13(i): *“the town shall complete the initial Title 5 inspections of all subsurface sewage disposal systems in the priority areas as approved by DEP in the town within seven years ... and shall inspect all subsurface sewage disposal systems in the priority areas, as approved by DEP, at least once every seven years thereafter...”*

Most Recent Modification

Second Modification to Second Amended Judgment:

Purpose: *"This will allow the Town to satisfy the wastewater management requirements of the Second Amended Final Judgment for the area known as Little Harbor and Inner Little Harbor (jointly, "Little Harbor"), by connecting Little Harbor to the Town's municipal sewer system, and by upgrading the Town's wastewater treatment facility ... to ensure that it can handle the increased flow that will result from connecting Little Harbor to the sewer system."*

Little Harbor Project Plan contained in Second Modification



-  LITTLE HARBOR WATERSHED
-  JERUSALEM ROAD SEWER DISTRICT BOUNDARY
-  LITTLE HARBOR SEWER DISTRICT BOUNDARY
-  ATLANTIC AVENUE SEWER DISTRICT BOUNDARY

SEWER BOUNDARY DELINEATION	
BOARD OF SEWER COMMISSIONERS IN COHASSET, MA	
 COUGHLIN ENVIRONMENTAL SERVICES, LLC <small>CONSULTING ENGINEERS AND PLANNERS 62 Montvale Avenue Stoneham, MA 02180-3637 Phone: (781) 832-1002 Fax: (781) 438-9854 Email: coughlinenviro@comcast.net</small>	DATE:
	DATE: 2/6/06
	SCALE: AS SHOWN

Connection Agreements

Town required to collect and accumulate enforceable "Connection Agreements" with homeowners

Para 52: *"The Town may exempt from the provisions of Title 5, ... the owners of residences identified in the Little Harbor Sewer District Proposed Connections Spreadsheet ... the Atlantic Avenue Sewer District Proposed Connections Spreadsheet ...and the Jerusalem Road Sewer District Proposed Connections Spreadsheet ... that require upgrades of failing systems ... , provided that: (i) the current owner and the person acquiring title has signed an enforceable agreement with the Town that is binding on subsequent owners that the property will be connected to the Wastewater Treatment Facility within the earlier of five years or 120 days of being notified of the availability of a connection to the Wastewater Treatment Facility; ..."*

What Happens if the Town Completes the Little Harbor Project on time?

Upon completion of the Little Harbor Project, Cohasset has satisfied the Second Amended Judgment as modified.

Second Modification: "Once the Town connects Little Harbor to its sewer system and upgrades the Wastewater Treatment Facility as set forth in this joint motion, the Town will have substantially performed all of its obligations pursuant to the Second Amended Final Judgment, and may seek an order terminating the judgment, which the Commonwealth will not unreasonably oppose."

What Happens if Cohasset fails to Complete Little Harbor Project on time?

If Cohasset fails to complete the Little Harbor Project on time, Cohasset is subject to penalties and further court orders.

Second Modification to Second Amended Judgment, Para 52:

“However, if the Town fails timely to perform its obligations to connect Little Harbor to the Town's sewer system and upgrade the Town's Wastewater Treatment Facility in accordance with Para. 51 above, the Town shall be subject to stipulated penalties pursuant to Para 35 of this modified Second Amended Final Judgment, and shall be subject to all other applicable relief.”

Court Imposed Time Line

Time Line: (Para 51):

“(iii) On or before October 15, 2006, the Town shall submit plans and specifications acceptable to DEP for upgrading the Wastewater Treatment Facility to ensure that it will be able to accommodate the anticipated additional flow from the Little Harbor Sewer System;

(iv) On or before July 1, 2007, the Town shall commence construction of the Little Harbor Sewer System;

(v) On or before July 1, 2007, the Town shall commence the work associated with upgrading the Wastewater Treatment Facility to ensure that it will be able to accommodate the anticipated additional flow from the Little Harbor Sewer System;

(vi) On or before July 1, 2010, the Town shall substantially complete construction of the Little Harbor Sewer System;

(vii) On or before July 1, 2010, the Town shall substantially complete the upgrades to the Wastewater Treatment Facility to ensure that it will be able to accommodate the anticipated additional flow from the Little Harbor Sewer System; and ...”

Court Imposed Time Line, Continued

TimeLine: (Para 51)

Cohasset must “**substantially complete**” the physical connection to the sewer infrastructure of all the Little Harbor individual properties listed on a schedule attached to the Second Modification, **by July 1, 2012.**

“(viii) On or before July 1,2012, the Town shall substantially complete the connection of all of the properties identified in the Little Harbor Sewer District Proposed Connections Spreadsheet (Ex. 4 attached) to the Town's municipal sewer system.”

Options Available to Town

Motion to terminate the Judgment

Motion to further modify the Judgment

Questions?