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Concord to appeal EPA storm sewer management complaint

By Patrick Ball/Staff Writer

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Concord - Town officials plan to contest a complaint the Environmental Protection Agency filed last week charging the town did not meet agency standards for protecting storm sewer systems that empty into local waterways.

The EPA on Aug. 12 filed complaints against Concord, as well as seven other Massachusetts communities and one in New Hampshire, for failing to meet permit requirements designed to ensure raw sewage and other pollutants stay out of municipal storm sewer systems that drain into rivers, ponds and coastal waters.

"Often we issue complaints that entities are discharging without a permit; we are not saying that here," Kathleen Woodward, senior enforcement council for the EPA said Tuesday. "What we are saying is that they are not complying with our requirements intending to prevent that from happening."

Concord faces a fine of up to \$50,000 for not having a bylaw or enforceable ordinance prohibiting illicit connections to municipal storm sewer systems, failing to develop and implement a plan to detect and eliminate illicit discharges and failing to sufficiently publicize the hazards of stormwater pollutants to employees and the public.

"I'm baffled by this," said Town Manager Chris Whelan, who plans to formally appeal the complaint and seek an informal meeting with EPA officials. "I feel that we are in compliance. We have considered ourselves to be a leader in this area."

Whelan said he believed the ordinance should be covered under the Public Works Commission's policy governing connections to municipal storm sewers and the town's private digging on public roads bylaw, which is an enforceable ordinance punishable by fine.

Regarding the plan, the town has completed a full stormwater assessment of catch basins, investigated suspicious connections and cleans half of the town's roughly 3,000 catch basins each year, Whelan said.

As far as informing the public and employees, Whelan said the town identifies best management practices for employees and holds "10 or 15 public information sessions."

Whelan said he was blindsided by news of the complaint, which he received via phone call from an EPA official hours before the agency published a press release announcing the complaints.

"They've looked at our stuff, they've asked questions about it, but never said it was inadequate," he said. "If they thought it was inadequate, they should have just let us know."

But the EPA does not issue notices of violation, according to Woodward, who said the town should have been aware of the investigation after a December 2008 request for information and subsequent inspection in February of this year.

The EPA's view

Woodward said the town's ordinance/regulatory system was not up to snuff and that the EPA did not see sufficient evidence that Concord was making significant efforts to publicize the importance of protecting storm sewer systems to employees and the public.

The EPA also took issue with a perceived lack of proactive screening of stormwater discharge areas during Concord's discharge permit term, which ran from May 1, 2003, to May 1, 2008.

"A very considerable concern is that they did come across some potential problems and waited a considerable amount of time to address them," Woodward said.

Woodward said the EPA's information is based on the town's annual reports, an information request and an inspection.

"We are confident in our information," she said, "but we are interested in sitting down with Concord and hearing their side of the story."