

EPA, town at odds over \$70,000 fine

McKenna upset with notification, says town is a victim of bureaucratic arrogance

By SETH DANIEL
For the Transcript

Next time the U.S. Environmental Protection Agency (EPA) is in Winthrop, it might be a good idea to roll out the red, make that the green, carpet for their arrival – or else.

Federal environmental officials say they were ignored and Town officials say they were surprised and bullied in a controversy between local officials and federal bureaucrats that probably won't end anytime soon.

Saying it's been snubbed by the town for some time regarding storm

water discharge permit requirements, the EPA slapped Winthrop with a \$70,000 fine and a specific list of do's and don'ts.

"We're seeking compliance first and foremost and also a penalty," said Kathleen Woodward, senior enforcement counsel for the EPA New England. "We believe – in Winthrop's case – a \$70,000 penalty is appropriate and we have stated that fully in the complaint... We have spoken with someone from the Town and they seem to be interested in doing the right thing and getting this resolved."

In Town Hall, it's an altogether different story.

Town Manager James McKenna said that he learned of the fine and the EPA's allegations in a press release – and then got the official complaint the next day. McKenna said that the allegations against the Town are not entirely true and the EPA's conduct on the matter has been very arrogant and unacceptable.

"They have taken an approach of prosecution rather than partnership with cities and towns to achieve their objectives," said McKenna on Wednesday. "[Informing us in a press release] is so inappropriate and I hope any political figure in the state... understands this was entirely inappropriate to learn it this way."

He continued, saying allegations

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in the press release and comments made to the Sun Transcript by EPA officials, are not accurate.

"That's not true [that we didn't comply] and the facts will show that's not true," said McKenna. "It seems to me some [federal] agencies seize on these opportunities to make political statements at the expense of communities like ours. That's shameful. Beyond that, they want to exact fines and pounds of flesh from communities that are trying to comply... It's not the kind of governance we need to have in today's world."

EPA officials fined Winthrop and eight other communities in Massachusetts and New Hampshire this month for non-compliance with regard to improving storm sewer pollution in area waterways. As part of an EPA storm sewer permit – which most every municipality has to obtain – Winthrop was required to investigate illicit storm water system hookups that pollute the Town's local lakes and coastal waters.

The storm sewer system collects rain, snowmelt and other waters from the streets and drains them to local water bodies. However, in older communities like Winthrop, many times there are illegal sewer hookups into the storm sewer, causing untreated sewage to flow directly into the Town's water bodies. Sometimes those hookups are on purpose and sometimes they're just a relic from the past when such things weren't frowned upon.

"These discharges contain high levels of bacteria," said Woodward. "They're not good from an environmental or a public health perspective."

In any case, it was Winthrop's job to find these illicit hookups and the EPA said the Town did nothing about it. That's a statement the Town has a lot of problems with.

"It just kind of got ignored," said Woodward. "Some municipalities really embrace this and see it as an opportunity to reduce their untreated discharges to their water bodies and other [municipalities] pretend it's not happening. We recognize a lot of municipalities have financial challenges right now, but this is a law and it's not terribly expensive. It's not like they have to replace the whole infrastructure."

Said McKenna, "We all know we have obligations under the Clean Water Act. We have not ignored that obligation as has been concluded in their press release... Certainly, our efforts don't deserve the insult and black eye coming from that press release."

In Winthrop's case, the Town got its storm sewer discharge permit in 2003, and it came with some conditions. One of the conditions was that the Town prepared a map of its storm sewer system and the outfalls (meaning the locations where the system discharges into local waters). Another condition was that the Town adopted an ordinance making it illegal to have these connections.

The biggest requirement, though, was to investigate the illicit connections, and the EPA says the Town did not do that by the time the permit ran out in 2008. The simplest test, Woodward said, is to look at all of the outfalls during dry weather. If there are discharges when it is dry, chances are there are illegal hookups in the system. Other tests include looking at the outfalls for discharges of foam, trash and foul odors – all of which are also tell-tale signs.

"We did not see any effort by Winthrop to proactively take down illicit discharges and do something about them," said Woodward. "That

is why we issued the complaint to AD to Winthrop

and the eight other communities."

However, the EPA also was not impressed with the Town's efforts on making a system map and passing an ordinance.

"The Town does not have a map," she said. "They submitted a map created in 1955 and said, 'The Town hasn't changed much since then and we don't have the money to do a new one.' We understand times are tough, but it's the law."

She said that the Town did take steps to pass an ordinance, even drafting and submitting it to the Town Council. However, it has yet to be passed to this day.

McKenna said that the Town has done some things wrong, but there was no discussion about the matter before the press release, and no effort to let the Town work on those shortfalls before slapping down the fine and the public insult.

"We do have to and have been beginning the process of understanding our obligations," he said. "What the record will show is Winthrop has, in fact, complied with a good portion of its obligations. Have we done it completely without mistake? No. There are things we do need to do and we agree with the EPA on some of these things... I would give someone an opportunity to address these concerns on a partnership basis and clearly I don't believe the EPA hears the concerns of the community."

McKenna also said that the EPA is unrealistic in not considering the dire financial circumstances facing the Town.

"EPA can't ignore our difficulties," he said. "There has to be a practical reality here."

The only solace is that Winthrop isn't the only community in the crosshairs of the EPA.

Peabody was also fined \$70,000, and even the well-heeled community of Concord got a fine of \$50,000. In Fall River, that city has yet to even submit the EPA any information and the EPA says that city is totally ignoring the matter. They have been hit with the maximum fine of \$177,500.

Meanwhile, in Revere, things with the EPA have gone much further south, with the U.S. Department of Justice intervening and bringing a case against that city which could result in a fine of up to \$300,000 and a list of improvements that will cost millions of dollars over the next few years. Revere has hired an attorney and is fighting the matter in federal court.

Revere, too, was surprised by the sudden action of the EPA last spring. A similar story has also unfolded in Gloucester.

It doesn't appear Winthrop's case will go that far – as long as the Town cooperates, but McKenna said he isn't too positive about the matter now.

"Frankly, I'm not optimistic," he said. "If they cared, they would have cared about how they delivered the message. There seems to be a level of disrespect that has to be overcome."

Woodward said that Winthrop may be able to complete a mitigation project to defray some of the fine. Such a project would bring about an improvement to the Town instead of just having to fork over thousands of dollars to the federal government – money that would most likely never be seen again locally.

Even in the case of a mitigation project, though, the funding would still be coming out of the Town's pockets at a time when money is tighter than the grip of an old, rusted lug nut.

Town officials will meet with the EPA in Boston in the near future for further discussions.

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