STATE OF VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
1 NATIONAL LIFE DRIVE, DAVIS 3
MONTPELIER, VT 05620-3522

1272 ORDER-Discharge Permit No. 3-1210

IN THE MATTER OF:
Town of Middlebury,
Permit No. 3-1210
94 Main Street
Middlebury, VT 05753

In accordance with the provisions of 10 V.S.A. § 1272, the Secretary (Secretary) of the Vermont Agency of Natural Resources (Agency) makes the following findings of fact. The definitions in the Combined Sewer Overflow Rule shall apply to this Order.

FINDINGS OF FACT

1) The Town of Middlebury (Middlebury) owns and operates the Middlebury Wastewater Treatment Facility (WWTF), which collects and treats sewage in its sanitary sewer system as well as stormwater and groundwater that enter that system through inflow and infiltration.

2) The WWTF is authorized to discharge treated and disinfected wastewater into Otter Creek under the terms and conditions of Discharge Permit No. 3-1210.

3) Discharge Permit No. 3-1210 lists the following combined sewer overflow (CSO) outfalls within the collection system: S/N 002 - CSO 001 (Pump Station 9, Weybridge Street), S/N 003 - CSO 002 (Pump Station 3, Route 23 between Murdock Ct and Shannon Rd.), S/N 011 - CSO 010 (Pump Station 2, Battel Block), and S/N 013 - CSO 012 (Pump Station 17, Main Pump Station, Lucius Shaw Ln). During certain storm events, these CSO outfalls discharge untreated sewage to Otter Creek. Such discharges adversely affect the quality of waters of the State and create public health concerns.

4) While the existing permit and the CSO rule refer to Combined Sewer Overflow(s) (CSO(s)), the Middlebury collection system is not designed to collect and treat both sewage and stormwater, but rather is designed for the collection of sanitary wastewater only, and therefore the outfalls are technically “SSOs" or "sanitary sewer overflows". However, during certain rain and snowmelt events, stormwater and groundwater enter the system through inflow and infiltration causing this outfall to discharge untreated sewage. Such discharges can adversely affect the quality of waters of the State and create public health concerns.

5) The discharges from these SSO outfalls violate 10 V.S.A. Chapter 47, the Vermont Water

Quality Standards (VWQS), and Discharge Permit No. 3-1210.

6) The EPA and Middlebury entered into an Order on Consent in April 2016. This order found that Middlebury was in violation of the Clean Water Act as a result of untreated discharges from their collection system, and Middlebury agreed to develop an Overflow Control Plan to address wet-weather discharges of untreated sewage. That order required[1]:
   a) By December 31, 2016, the Town shall submit an assessment of the Town's legal authority to remove roof leaders, sump pumps, and other drainage connections to the collection system; a description of the Town's program for removing roof leaders, sump pumps, and other drainage connections to the collection system; and an evaluation of the program's effectiveness.
   b) By December 31, 2016 the Town shall submit a wet-weather overflow evaluation to EPA and VTDEC. The Town may submit to EPA a request for an extension on submission of the wet-weather overflow evaluation should there be insufficient rainfall in 2016 to conduct such evaluation or for other good cause. The wet-weather overflow evaluation shall include the Permit Overflow Outfalls listed in the 2008 NPDES permit as well as any other overflow points in the Collection System. The evaluation shall include:
      i) Maps sufficient to understand sources of wet-weather flow for all overflow points.
      ii) A listing of all wet-weather sewer overflows since January 1, 2010, including detailed information on start and stop time of overflow, estimated volume released for each overflow (including supporting calculations), and precipitation data and an estimate of snowmelt for each date, to the extent such information is available.
      iii) For each location with a wet-weather overflow since January 1, 2010, an analysis of the sources of additional flow to that location during wet-weather and an estimate of the current wet-weather flow contribution of each source as well as an estimate of the amount, if any, of wet-weather flow removed from the source since January 1, 2010. Include sources such as:
         (1) Roof drains (including approximate number, and estimate of total area connected);
         (2) Sump pumps (including approximate number, and estimate of total flow contributed);
         (3) Other impervious surface draining to sanitary sewer (including a list and estimate of total area connected); and
         (4) Infiltration within the sanitary sewer system, broken down as far as possible by different areas of the system contributing to 'the overflow point.

         The evaluation shall include copies of any reports (e.g. Infiltration/Inflow studies) used to determine wet-weather flow sources.

      iv) For each overflow location, provide downstream sewage flow capacity (based on pumping capacity or pipe size limitations, as appropriate), storage available at the

[1] Note the list numbering has been changed from the numbering within the EPA Order to coincide with the format of this DEC Order.

location (e.g. excess capacity of wet well), dry weather flow, and based on above sources, estimated excess wet-weather flow.

c) By December 31, 2017, the Town shall submit an Overflow Control Plan for EPA review and approval. The plan shall consider measures including upgrading pumps, increasing capacity in sewer lines, removing sump pumps and sources of inflow, removing connected impervious cover, increasing storage and repairing/rehabilitating sewer lines to decrease infiltration, and shall include:
   i) A detailed list of actions to be taken, and estimates of amount of wet-weather inflow removed by each action;
   ii) Calculations for each overflow point listed in paragraph 2 demonstrating that there will be no overflow in wet weather after the plan is fully implemented;
   iii) A timeline for completing work;
   iv) A budget for completing work; and
   v) A description of methods for ensuring that other parties who own or operate portions of the collection system will carry out work necessary for completing the plan.

d) The Town may submit to EPA a request for an extension on submission of the Overflow Control Plan if there was a weather-related delay in completing the wet-weather overflow evaluation called for in [Condition 6.b.] above, or for other good cause.

e) The Overflow Control Plan and timeline submitted pursuant to [Condition 6.c.] of this Order shall be incorporated and enforceable hereunder upon the Overflow Control Plan's and timeline's approval by EPA.

f) Until implementation of the Overflow Control Plan is completed, by January 15 of each year, the Town shall submit a Overflow Control Plan Annual Report. The Annual Report shall include:
   i) A detailed description of the actions taken by the Town, or known by the Town to have been taken by other parties, to address any action items included in the Overflow Control Plan during the previous calendar year;
   ii) A summary listing of all overflows in the Collection System in the previous calendar year.
   iii) A description of the actions that are being taken during the current calendar year to implement the Overflow Control Plan.

g) Requirements under this Order shall be undertaken using sound engineering practices, including, as appropriate, practices to improve the resilience of the town's sewer system infrastructure to the impacts of climate change.

7) In November 2017, Middlebury requested an extension of the due date for the Overflow Control Plan required under the consent order. This was approved in December 2017 and the due date was changed from December 31, 2017 to June 30, 2018.

8) Aldrich + Elliott prepared a report titled Wet Weather Overflow Evaluation for Middlebury in December 2016.

9) Middlebury submitted an assessment of their ability to disconnect sump pumps in January 2017.

10) Aldrich + Elliott prepared a report titled Overflow Control Plan for Middlebury in June 2018.

11) Middlebury submitted an annual report covering 2018 in January 2019 to the EPA and VT Department of Environmental Conservation (VT DEC) as required by the EPA Consent Order.

12) VT DEC does not have any record of whether Middlebury submitted an annual report for 2019 to the EPA and VT DEC as required by the EPA Consent Order.

13) Middlebury submitted an annual report covering 2020 in January 2021 to the EPA.

14) Middlebury submitted an annual report covering 2021 in January 2022 to the EPA and VT DEC as required by the EPA Consent Order.

15) In June of 2022, Middlebury notified VT DEC and EPA that the flow monitoring equipment at Pump Station 9 (S/N 002, CSO 001) was mis-calibrated and therefore SSOs likely occurred without Middlebury notifying the public or the Secretary. Middlebury reviewed their available data and identified 4 probable SSO events between 5/1/2021 and 4/8/2022. The equipment was recalibrated, and Middlebury has reported 17 wet-weather SSO events since 4/9/2022

16) Middlebury submitted an annual report covering 2022 in January 2023 to the EPA and VT DEC as required by the EPA Consent Order.

17) Middlebury submitted an annual report covering 2023 in January 2024 to the EPA and VT DEC as required by the EPA Consent Order.

18) Although Middlebury has largely complied with the requirements of the EPA Consent Order, SSO overflows continue to occur. Therefore, it is necessary for the Town to prepare a Long Term Control Plan to address these overflows.

19) Without the implementation of the requirements set forth in this Order, it can reasonably be expected that the overflows from Middlebury's remaining SSO outfalls 001, 002, 010, and 012 to the Otter Creek will continue to create or cause a discharge of untreated sewage to waters of the State in violation of 10 V.S.A. Chapter 47, the Vermont Water Quality Standards (VWQS), and Discharge Permit No. 3-1210.

ORDER

Based on the foregoing findings of fact, the Secretary issues the following Order, under 10 V.S.A. § 1272 and the Combined Sewer Overflow Rule (Environmental Protection Rule, Chapter 34), to ensure all remaining SSOs in Middlebury are brought into compliance with the

applicable requirements of state and federal law, including the VWQS.

(I) **Minimum Controls.** The municipality shall implement the minimum technology-based requirements below, known as the "Minimum Controls," which are designed to maximize pollutant capture and minimize impacts to water quality:

(1) Proper operation and regular maintenance programs for collection systems and SSO outfalls;

(2) Maximum use of the collection system for storage without endangering public healthor property, or causing solids deposition problems;

(3) Review and modification of pretreatment requirements to assure that SSO impactsare minimized;

(4) Maximization of flow to the treatment plant for treatment consistent with an evaluation of alternative treatment options;

(5) Prohibition of SSOs during dry weather;

(6) Control of solid and floatable materials in SSOs;

(7) Establishment of pollution prevention programs to minimize contaminants in SSOs;

(8) Public notification to ensure that the public receives adequate notification of SSOs and SSO impacts, which shall, at a minimum, comply with the notification requirements applicable to CSOs under § 34-404 of the Combined Sewer Overflow Rule (Environmental Protection Rule, Chapter 34);

(9) Monitoring to effectively characterize SSO impacts and the efficacy of SSO controls,which shall include at a minimum:

(A) The municipality shall define through monitoring, modeling, and other means, as appropriate, the sewer system, the response of the system to a range of precipitation events that encompasses the 5-year design storm, the characteristics of the overflows, and the water quality impacts that result from SSOs. To comply with the foregoing requirement, the municipality shall, at a minimum:

(i) Establish and maintain a precipitation monitoring system. The system must provide unique precipitation amounts specific to individual SSO subcatchments. Precipitation measurements shall be to the nearest 0.01 inches, continuous at a 5-minute interval over the duration of a storm event, and indexed to time and date. If establishing a physical precipitation monitoring system, the municipality shall work to minimize impacts of wind and surrounding trees and buildings that may hinder the accuracy of precipitation recording devices. If a municipality proposes to use a system other than a physical precipitation monitoring system, themunicipality shall get prior approval from the Secretary.

(ii) Establish and maintain a SSO flow monitoring system.

(B) The municipality shall submit to the Secretary, by no later than January 31st

of each year, a report on SSO control project(s) of the previous calendar year. The Secretary will use the information from the report to monitor the progress on implementation of SSO control project(s). The municipality shall report progress on:

(i) Compliance with the Minimum Controls;

(ii) The condition and operation of the collection system;

(iii) The frequency, duration, and magnitude of the precipitation events leading toSSOs from the system in the past year and a comparison to prior years;

(iv) The frequency, duration, and magnitude of all SSOs from the system in thepast year and a comparison to prior years;

(v) The overall status of the Long Term Control Plan (LTCP); and

(vi) Key SSO control accomplishments, highlighting those that reduced the frequency and magnitude of SSOs; projects under design; and construction that occurred in the previous year.

(II) **Long Term Control Plan.** The municipality shall create a Long Term Control Plan (LTCP) and submit it to the Secretary **within 18 months of the date of this Order (May 12, 2026)**. In developing a LTCP, the municipality shall employ a public participation process that activelyinvolves the affected public in the decision-making to develop and select the long-term SSO controls. The affected public includes rate payers, industrial users of the sewer system, persons who reside downstream from the SSO outfalls, persons who use and enjoy the downstream waters, and any other interested persons.

Additionally, in developing LTCPs, the Agency encourages municipalities to evaluate and implement green stormwater infrastructure for stormwater runoff and sewer overflow management to the greatest extent possible when developing their LTCPs. The LTCP shall, at a minimum, include:

(1) An alternatives analysis that shall evaluate the costs and performance of multiple SSO control alternatives, such as:

- adding storage tanks or retention basins to hold overflow during storm events;
- conducting internal inspection with closed circuit television anddetailed manhole inspections to determine where sewer line andmanhole rehabilitation is required;
- repairing or replacing sewer lines and other components of the collection system to reduce groundwater infiltration;
- expanding the treatment plant capacity;
- adding screening and disinfection facilities for the overflow;
- incorporating green stormwater infrastructure to reduce stormwaterflow into the collection system to the greatest extent feasible and practical; and

- providing for disinfection of SSOs at the outfall and discharge toan approved waste management zone.

(2) A detailed list of the selected SSO control projects necessary to bring the SSO into compliance with the VWQS and a timeline for implementing the projects. Projects shallbe prioritized based on the relative importance of adverse impacts upon water quality, including impacts on designated and existing uses. The municipality shall give the highest priority to bringing overflows to "sensitive areas" into compliance with the VWQS. "Sensitive areas" means designated Outstanding Resource Waters, designated National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters where primary contact recreation occurs, public drinking water intakes or their designated protection areas, and shellfish beds.

(3) A strategy to ensure that new sources of stormwater and wastewater to the collection system do not increase the volume, frequency, or duration of SSO events throughimplementation of control measures, such as making reductions in existing sources of stormwater or wastewater to the collection system, creating or increasing storage capacity within the collection system, or other measures approved by the Secretary.

(4) Measures to address and prevent any documented, recurrent instances of sewage backups or discharges of raw sewage onto the ground surface.

(5) A financing plan to design and implement the SSO control projects identifiedpursuant to subsection (II)(2) of this Order.

(6) A proposed schedule to bring the municipality's SSO into compliance with the VWQS. The Agency recognizes SSO abatement and control is a costly process and anticipates plans will take an iterative approach to lessen the number and quantity of SSO events and improve their quality. As such, the schedule may include interim SSO controls asa step in the process of bringing SSOs into compliance with the VWQS. Interim SSO controls should be evaluated and designed based on storms with a theoretical 5-year recurrence interval (also known as the 5-year design storm). The 24-hour and 1-hour extremeprecipitation depths at the 5-year recurrence interval for Middlebury is listed in Appendix A of the Combined Sewer Overflow Rule (Environmental Protection Rule, Chapter 34).

(III) General Conditions.

(1) The plans and information required by this Order shall be submitted in electronicformat to: ANR.WSMDWastewater@vermont.gov.

(2) The Secretary reserves the right to amend this Order at any time as necessary toprotect water quality and to comply with state and federal law.

(3) The State of Vermont and the Secretary reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violationsset forth above.

(4) Nothing in this Order shall be construed as having relieved, modified, or in any manner affected the municipality's on-going obligation to comply with all other federal, state, or local statutes nor does it relieve the municipality of the obligation to obtain all necessary federal,state, and local permits.

(5) This Order does not grant any exclusive rights or privileges, which would impair anyrights possessed by riparian or littoral owners of the State of Vermont. It does not grant any right, title, or easement to or over any land, nor does it authorize any damage to private propertyor invasion of private rights or the violation of federal, state, or local laws or regulations.

(6) The Secretary, in issuing this Order, accepts no legal responsibility for any damage,direct or indirect of whatever nature and by whoever suffered, arising out of the activities described.

(7) This Order is not a resolution of any enforcement action that may be pending,contemplated, or initiated in this matter.

(8) The municipality shall allow access to Agency representatives, upon the presentationof proper credentials, to inspect the subject site and sample any discharge or receiving waters as necessary to assess compliance with this Order and applicable state laws related to water quality.

(9) Pursuant to 10 V.S.A. Chapter 220, any appeal of this Order must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of this Order. For further information, see the Vermont Rules for Environmental Court Proceedings , available online at www.vermontjudiciary.org. The address of the Environmental Court is Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401 (Tel# (802) 951-1740). The filing of an appeal does not stay this Order.The Notice of Appeal must specify the parties taking the appeal and the statutory provisions under which each party claims party status; must state the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and description of the property, project, orfacility which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental

Court Proceedings.

(10) This Order shall be effective upon the date of signing and shall remain in effect until such time as the activities governed under this Order are completed or until such time as the Agency rescinds this Order or issues a subsequent Order, whichever occurs first.

Dated this 12th day of November 2024

Julia S. Moore, Secretary
Agency of Natural Resources

By: 
Digitally signed by Peter LaFlamme
DN: cn=Peter LaFlamme, o=VTDEC, ou=Watershed Management Division, email=pete.laflamme@vermont.gov, c=US
Date: 2024.11.12 17:52:58 -05'00'

Peter LaFlamme, Director
Watershed Management Division