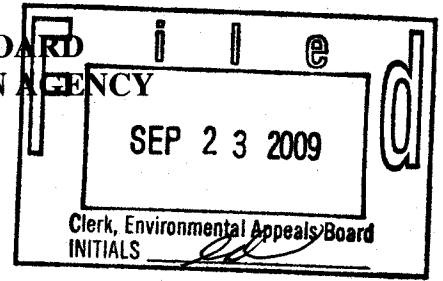


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
)

Upper Blackstone Water Pollution )  
Abatement District )  
)

NPDES Permit No. MA 0102369 )  
\_\_\_\_\_ )

NPDES Appeal Nos. 08-11 to 08-18 &  
09-06

**SECOND ORDER RESCHEDULING ORAL ARGUMENT**

By Order dated August 6, 2009, the Environmental Appeals Board scheduled oral argument to be held in this matter. By a subsequent order, the Board rescheduled oral argument to be held on Wednesday, September 30, 2009. Before the Board at this time is the Upper Blackstone Water Pollution Abatement District's motion requesting a further rescheduling of oral argument and an opportunity for limited supplemental briefing. The Board has received oppositions to the District's motion from U.S. EPA, Region 1 and Conservation Law Foundation.

The District requests a 30-day continuance of the oral argument to afford it additional time to review the Board's recent decision in the case of *In re City of Attleboro, MA, Wastewater Treatment Plant*, NPDES Appeal Nos. 08-08 & 08-09 (EAB Sept. 15, 2009), 14 E.A.D. \_\_. The District states that it needs additional time to "refine [its] positions in light of this new authority and, before oral argument occurs, to present to the Board a clear picture of the issues to address" and to "provide the Board with supplemental briefing \* \* \* narrowing the issues that remain \* \* \*." In opposing the District's motion, the Region contends that the parties have already been

afforded sufficient time to review the *Attleboro* decision and the Region expresses concern that the District's desire to "refine" its arguments will cross into the prohibited realm of raising new arguments that it should have presented in its appeal. CLF's opposition joins in the Region's objections and expresses concern regarding delay that allows the District to continue discharging under the limits set by the District's prior permit.

Upon consideration, we grant the District's request for a second rescheduling of oral argument in this matter. The Board encourages the parties to meet and confer for the purpose of "narrowing the issues that remain" and to determine whether any remaining disputes can be best handled through a settlement process. No further briefing is allowed at this time. The Oral argument in this matter shall be held on Thursday, October 29, 2009, beginning at 10:00 a.m., in the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C.

As stated in the Board's August 6 Order, oral argument shall be divided as follows (with the parties and Amicus presenting argument in the following order):<sup>1</sup> (1) fifteen minutes for CLF; (2) thirty minutes for the District, (3) five minutes for MassDEP; (4) ten minutes in total for Holden, Worcester, Millbury, and Cherry Valley, collectively;<sup>2</sup> and (5) fifty minutes for the Region. At the outset of the proceedings, the District and CLF may each reserve up to five

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<sup>1</sup> The Board has not allocated time for Trout Unlimited to present argument as its petition appears to have been rendered moot by the Permit modification. The Board also recognizes in this order that RIDEM has declined to participate in oral argument.

<sup>2</sup> Holden, Worcester, Millbury, and Cherry Valley have all sought review of the Permit with respect to the Region's decision to include "co-permittees" in the Permit. The Board encourages Holden, Worcester, Millbury and Cherry Valley to confer and assign a single attorney to represent them at oral argument.

minutes of their allocated time for rebuttal.

The parties and Amicus Curiae participating in oral argument shall focus their arguments on issues pertaining to the Permit's conditions for phosphorus, nitrogen, and total aluminum and the addition of "co-permittees" to the Permit. The parties<sup>3</sup> and Amicus should specifically address the regulations prohibiting the Region from issuing a permit "[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States," 40 C.F.R. § 122.4(d), and requiring that permits include conditions in addition to or more stringent than promulgated effluent limitations "necessary to \* \* \* (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality," bearing in mind, among other things, that such "Limitations must control all pollutants or pollutant parameters \* \* \* which the [permit issuer] determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." *Id.* § 122.44(d)(1)(i).

The previous deadline for the parties and Amicus to notify the Clerk of the Board in writing of the names of counsel who will present argument is extended to Monday, October 19, 2009 (the parties and Amicus are not required to resubmit or change their previously filed notices if there is no change). Counsel for the parties are advised that the Administrative Courtroom is equipped with state-of-the-art video-conferencing equipment and, accordingly, any party or

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<sup>3</sup> We reiterate that any party seeking review of the Permit's conditions shall be prepared to explain how that party's petition sustains its burden of "showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. § 124.19(a).

Amicus may participate in the oral argument by video conference, rather than attending in person. Counsel who wish to participate in this oral argument via video-conferencing shall contact the Clerk of the Board, at 202-233-0122, no later than Monday, October 19, 2009, to make arrangements for use of the video-conference equipment.

So ordered.

Dated:

*September 23, 2009*

ENVIRONMENTAL APPEALS BOARD

By: *Anna L. Wolgast*  
Anna L. Wolgast,  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Second Order Recheduling Oral Argument in the matter of Upper Blackstone Water Pollution Abatement District, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, were sent to the following persons in the manner indicated:

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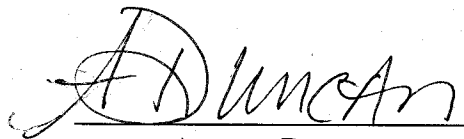
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Dated: SEP 23 2009



Annette Duncan  
Secretary