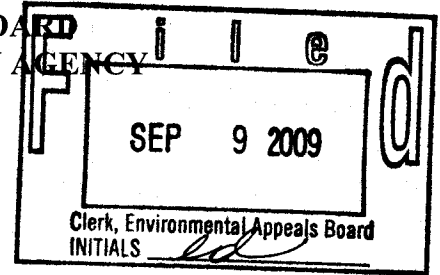


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

Upper Blackstone Water Pollution )  
Abatement District )  
)

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

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

**ORDER RESCHEDULING ORAL ARGUMENT**

By Order dated August 6, 2009, the Environmental Appeals Board scheduled oral argument to be held in this matter. The Board has determined to reschedule oral argument to be held on Wednesday, September 30, 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

<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.

Region. At the outset of the proceedings, the District and CLF may each reserve up to five 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, September 21, 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

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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).

Courtroom is equipped with state-of the-art video-conferencing equipment and, accordingly, any party or 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 Friday, September 18, 2009, to make arrangements for use of the video-conference equipment.

So ordered.

Dated:

*September 9, 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 Order Rescheduling 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:

### Telecopier and Pouch Mail:

Karen A. McQuire  
Amanda J. Helwig  
U.S. EPA, Region 1  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023  
FAX: 617-918-1505

### Telecopier and U.S. First Class Mail:

John Davenport  
Conservation Law Foundation  
62 Summer Street  
Boston, MA 02110-1016  
Fax: 617-350-4030

James Shuris  
Director of Public Works  
Town of Holden, Massachusetts  
1196 Main Street  
Holden, MA 01520  
Fax: 508-829-0252

J. Bradford Lange  
Sewer Commission  
Town of Millbury, Massachusetts  
Municipal Office Building  
127 Elm Street  
Millbury, MA 01527  
Fax: 508-865-0853

Donald G. Manseau  
Cherry Valley Sewer District  
P.O. Box 476  
Leicester, MA 01524  
Fax: 508-892-4371

David M. Moore  
City Solicitor, City of Worcester  
City Hall  
455 Main Street  
Worcester, MA 01608  
Fax: 508-799-1163

Susan B. Forcier  
Department of Env. Management  
Office of Legal Services  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908-5767  
Fax: 401-222-3378

---

Nathan A. Stokes  
Bares & Thornburg, LLP  
750 17<sup>th</sup> Street, NW  
Suite 900  
Washington, DC 20006  
Fax: 202-289-1330

Karen L. Crocker  
MA Dept. of Environmental Protection  
Office of General Counsel  
One Winter Street  
Boston, MA 02108  
Fax: 617-338-5511

Christopher M. Kilian  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602  
Fax: 802-223-0060

David Mears  
Environmental and Natural Resources  
Law Clinic  
Vermont Law School  
P.O. Box 96, Chelsea Street  
South Royalton, VT 05068  
Fax: 802-831-1631

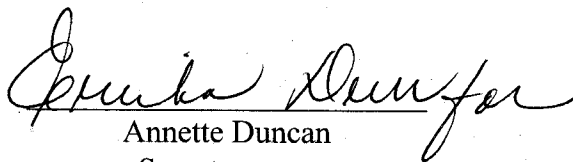
Robert D. Cox, Jr.  
Norman Bartlett  
Bowditch & Dewey, LLP  
311 Main Street  
P.O. Box 15156  
Worcester, MA 01615-0156  
Fax # (508 ) 929-3072

U.S. First Class Mail:

Northern RI Chapter 737 Trout Unlimited  
C/o Roland C. Gauvin  
2208 Mendon Road  
Cumberland, RI 02864

Dated:

*September 9, 2009*



Annette Duncan  
Secretary