CITY OF WORCESTER, MASSACHUSETTS

Law Department

David M. Moore
City Solicitor

September 24, 2008

Via Hand Delivery

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G. Street, N.W., Suite 600
Washington, DC 20005

Re: In re: Upper Blackstone Pollution Abatement District
Millbury, Massachusetts
National Pollutant Discharge Elimination System
Permit NPDES No. MA 0102369

Dear Sir/Madam:

Enclosed please find one (1) original and five (5) copies of a Petition for Review of Contested Permit Conditions NPDES Permit Issued by EPA Region 1 with respect to the above-referenced permit.

Sincerely,

David M. Moore
City Solicitor

Enclosures

cc: Carl Dierker
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ENVIRONMENTAL APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

In re:	)	
	)	
UPPER BLACKSTONE WATER POLLUTION ABATEMENT DISTRICT, MILLBURY, MASSACHUSETTS	)	NPDES Appeal No. 08-11
	)	
NPDES Permit No. MA0102369	)	

PETITION FOR REVIEW OF CONTESTED PERMIT CONDITIONS
NPDES PERMIT ISSUED BY EPA REGION 1

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1. INTRODUCTION

Pursuant to 40 CFR §124.19(a), the City of Worcester ("the City" or "Worcester"), through its undersigned representative, respectfully submits this petition for review of the final National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0102369 (the "Final Permit" or "Permit") dated August 22, 2008, issued by the United States Environmental Protection Agency ("EPA"), Region 1 ("Region 1") to the Upper Blackstone Water Pollution Abatement District (the "UBWPAD" or the "District"). Specifically, the City contests the provisions in the Permit which purport to include the City as a "co-permittee" under the Final Permit.

For the reasons discussed in greater detail below, the City requests that the Environmental Appeals Board ("Board" or "EAB") review the aforementioned contested provisions because they are based upon clearly erroneous findings of fact or conclusions of law, and/or involve an exercise of discretion or an important policy consideration that the Board should, in its discretion, address. The issues raised in this Petition include some of the same issues raised by the City, UBWPAD, and others during the public comment period for the draft Permit which Region 1 did not properly address or consider in its response to comments or in issuing the Final Permit.

2. BACKGROUND

The City, and many others, timely filed comments with Region 1 concerning certain conditions in the draft Permit (the "Comments"). The City is a political subdivision of the Commonwealth of Massachusetts. The City owns it own sewer and storm water infrastructure that convey wastewater through and from Worcester to the UBWPAD treatment facility. Six

other municipalities also convey wastewater the UBWPAD treatment Facility. The UBWPAD treatment facility has an address of 50 Route 20, Millbury, Massachusetts. Pursuant to the federal Clean Water Act ("CWA"), the District is authorized to discharge from the Facility to the Blackstone River pursuant to the terms of an NPDES permit issued on September 30, 1999, as modified by a settlement agreement dated December 19, 2001 (the "2001 Permit").

On November 8, 2005 the District submitted an updated renew application to Region 1. On March 23, 2007, Region 1 issued a draft NPDES permit. The District and many others submitted comments on the draft NPDES permit within the public comment period which concluded on May 25, 2007.

On August 22, 2008, Region 1 issued the Permit, along with a Response to Comments document consisting of approximately 122 single spaced pages, not including charts and exhibits, all of which was received by the District by certified mail on August 25, 2008.

3. ARGUMENT – CO-PERMITTEES

Region 1 has improperly expanded the scope of the Permit to include as "Co-permittees" municipalities, such as the City, that own and operate wastewater collection systems which convey wastewater to the District's system and plant for treatment. Furthermore, Region 1 has sought to create a class of "co-permittees" upon which obligations are imposed without those co-permittees ever making application for or signing the Permit. While Region 1 did revise the co-permittee provision of the Final Permit in an apparent effort to respond to comments and concerns that Region 1 was impermissibly making the District responsible for operation and maintenance of these local collection systems, the revised provision remain unclear and inappropriate. For example, Region 1's effort to shift to co-permittees certain operation and

maintenance obligations nonetheless still obligates the District to undertake certain activities associated with the City's wastewater collection systems over which the District has no control. The District is prohibited from managing the City's sewerage system.

Region 1 relies upon the District's enabling legislation, Chapter 725 of the Act of 1968. (Appended as Exhibit A. See Response to Comment #F45, page 87, hereinafter, "RTC #__, p. __"), for authority to impose this obligation, and specifically I/I control. Region 1 improperly relies upon Section 7, which addresses industrial discharges only, and ignores Section 16 which specifically limits the District's authority over its member communities' satellite systems. Section 16 provides:

> nothing [in the District's enabling authority] shall be interpreted to authorize the board to construct, *operate or maintain the local sewage system* of each member, city, town or sewage district." (Emphasis added).

Further, according to Region 1,

> that [the District] and its member communities have decided to maintain separate ownership of the treatment plant and collection system does not require the EPA to solicit separate signatures from each of the satellite systems. Nor does it require the EPA to issue separate permits to [the District] the satellite systems.

RTC #F45, p. 86. It is precisely for this reason – separate ownership and control of the collection system and the treatment of collected waste – that the EPA may not designate as "co-permittee" the City. Issuing a single permit puts the District and the City in conflict with the District's enabling statute issued by the Great and General Court of the Commonwealth of Massachusetts and at risk of being the target of enforcement by Region 1 for matters the District is legally prohibited from controlling by state law.

Region 1 does not adequately consider or respond to the comments regarding the affected municipalities' participation in the Permit process. The Region contends that co-permittees need

not apply for or sign any permit application or, apparently, take any affirmative step in order for Permit conditions to be binding upon those communities. RTC #F45, p. 86-87. However, the regulations implementing the NPDES permit application process belie Region 1's interpretation. In describing who must sign applications for a permit, 40 CFR 122.22 (a)(3) notes that all permit applications must be signed, "*For a municipality, State, Federal, or other public agency.* By either a principal executive officer or ranking elected official." The application for this permit was not signed by either a principal, executive officer or a ranking elected official for any of the seven other public entities, including the City, which the Region seeks to bind by this Final Permit. Moreover, the director of the District cannot be said to be an authorized representative of these public entities, even if the regulations were to allow permit applications to be signed by authorized representatives. "Authorized representative" is defined in the subsequent section of the regulations, which requires that reports or other information submitted to EPA in connection with a permit be signed by one of the parties described in (a) or an authorized representative:

> "A person is a duly authorized representative only if: (1) The authorization is made in writing by a person described in paragraph (a) of this section; (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and, (3) The written authorization is submitted to the Director." 40 CFR 122.22(b)

The Director of UBWPAD in this case received no authorization in writing to represent any of the "co-permittees," nor was such written authorization submitted with the application. The application was submitted solely on behalf of the District, was only signed by the District

and cannot now be imposed upon the City or other entities which were not party to the application.

The Region apparently relied upon information in the District's application identifying "municipalities served," RTC #F28, p. 67, RTC #F45, p. 86, but chose to ignore the separate municipal and state entities which have legal control over the collection systems in those municipalities and the various contractual relationships between them. Instead of seeking to identify and then permit each owner of the satellite systems, Region 1 contends that it has legal authority to bind each system under the Permit because it purportedly gave notice of these new obligations by providing each municipal "co-permittee" with a copy of the Fact Sheet and Draft Permit in advance of the Final Permit. RTC #F45, p. 87. Certainly, having not signed a permit application, the City did not seek to be a "co-permittee" or request Region 1 to impose new obligations on the City under this Permit. The City notes that the owners of some wastewater collection systems were ignored (e.g., Massachusetts Department of Conservation and Recreation or DCR), and others, while recognized, were inexplicably deemed too small to be included as co-permittees (e.g., Sutton, Shrewsbury, Oxford and Paxton). Such arbitrary permitting action is not fully addressed by the Region's Response to Comments.

Consequently, the City requests that the Board grant review of this Petition and order Region 1 to remove the co-permittee provisions of the Final Permit.

Respectfully submitted,
CITY OF WORCESTER
By its attorneys,

Dated: September 23, 2008

CERTIFICATE OF SERVICE

I, David M. Moore hereby certify that I have served a copy of the foregoing on the following by mailing same, postage prepaid, this 23rd day of September 2008, to:

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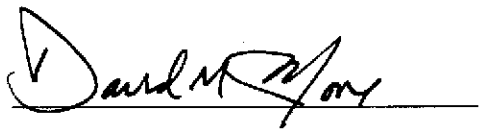

Dated: September 23, 2008

The following is a copy of the enabling legislation for the district that has been updated in accordance with the amendments listed below:

Amend. 1,	Chap. 591, Acts of 1971	Board membership; district seal; cost allocation
Amend. 2,	Chap. 1056, Acts of 1971,	not an amendment, allows agreements with Worcester county Commission
Amend. 3,	Chap. 222, Acts of 1972	Septage receipt, later fully revised by revisions 7 and 8
Amend. 4,	Chap. 184, Acts of 1973	Board membership and alternate membership
Amend. 5,	Chap. 680, Acts of 1973	eminent domain
Amend. 6,	Chap. 12, Acts of 1976	Board compensation
Amend. 7,	Chap. 99, Acts of 1977	Voting requirements
Amend. 8,	Chap. 177, Acts of 1982	Voting; septage receipt
Amend.9,	Chap. 522, Acts of 1982	Oxford membership, later fully revised by revision 10
Amend. 10,	Chap. 26, Acts of 1983	Oxford membership
Amend. 11,	Chap 220, Acts of 1984	assessments; septage and sludge acceptance
Amend. 12,	Chap. 413, Acts of 1985	training center
Amend. 13,	Chap. 740, Acts of 1985	pretreatment
Amend. 14	Chap. 485, Acts of 1987	Board compensation
Amend. 15	Chap. 156, Acts of 1995	Board compensation
Amend. 16	Chap. 167, acts of 2003	District membership; Board membership; alternate membership; Board compensation; cost apportionment; membership buy-in; withdrawal from membership; proposition 2 ½ override.

CONTENTS OF ACT

ACTS, 1968. CHAP. 752.

AN ACT ESTABLISHING THE UPPER BLACKSTONE WATER POLLUTION ABATEMENT DISTRICT.

Be it enacted, etc., as follows:

SECTION 1. The city of Worcester, by vote of its city council, and the towns of Auburn, Boylston, Holden, Leicester, Millbury, Oxford, Paxton, Rutland, Shrewsbury and West Boylston, by vote of a town meeting, may, subject to conditions enumerated in this act, create a water pollution abatement district which shall be a body corporate known as the Upper Blackstone Water Pollution Abatement District, in this act referred to as the district. There shall be no time limit on the date of acceptance of this act. The department of conservation and recreation may act as a sewer district under this act, accept its provisions and become a participating member of the district.

All of the sewer districts, not now members of the district, representing a portion of any of the above towns may become associate members of the district without representation on the board and without voting status, if a sewer district has, or has contracted for, sewerage facilities to transport its sewage to the district for treatment and has paid the membership fee in accordance with section 10.

SECTION 2. The district shall be under the management and control a board which is hereby created and shall be known as the Upper Blackstone Water Pollution Abatement Board, hereinafter called the Board.

The board shall consist of residents or employees of the district member city, towns or districts. In order to ensure that Worcester, as the majority member of the board, retains a majority vote on the board, the board shall consist of 1 member representing each member of the district, except the city of Worcester, which shall appoint not less than 3 nor more than 5 board members. The total number of votes of the board shall equal 2 times the number of board members not from Worcester plus 1. The votes shall be distributed so that each board member not from Worcester shall be entitled to 1 vote with the remaining votes to be distributed evenly among the Worcester board members.

The Board may act by a majority vote on all matters; provided, however, that a two-thirds majority vote shall be required of the representatives on the Board for the undertaking of any capital outlay project costing more than one hundred thousand dollars; the incurrence of debt; the removal of the engineer-director; and the exercise of the power of eminent domain.

The members of the Board from the city of Worcester shall be appointed by the city manager. The representative to the board from a town shall be appointed by the board of sewer commissioners, if such has been duly elected; otherwise in accordance with provisions of law applicable to each town. The members of the Board from a sewer district resenting a portion of a town or towns shall be named by the sewer commissioners from that district. Members appointed to the Board must be residents of the area which they represent and may be municipal employees. Members from the towns and sewer districts may be members of the local boards of sewer commissioners.

Representatives on the board shall be appointed for terms of three years with the following exceptions: The first two representatives appointed from the city of Worcester shall be appointed for terms of two years, followed by appointments for terms of three years; upon admission of a new member the first representative shall be appointed for a term of one, two, or three years, to provide, as nearly as possible, for an equal number expiring each year. Each representative shall serve until the first Wednesday in April of the year in which his term is to

expire or until his successor is qualified. Representatives on the board may be reappointed.

The appointing authorities in the city of Worcester, member towns and sewer districts, may appoint 1 alternate board member for each duly appointed board member, who shall be empowered to serve in place of the duly appointed board member, when so authorized by the board member or by the appointing authority, at such times and places and to the same degree as the board member is empowered to serve in his own right.

Whenever the board shall notify in writing the appointing authority in the city of Worcester, member towns, and sewer districts, that its representative is unable, refuses or has failed to participate in the management and control of the district, said appointing authority shall forthwith appoint a representative pro tempore, who shall serve as the duly appointed representative until said representative has resumed his responsibilities or until his successor has been qualified.

Whenever an alternate representative or representative pro tempore is appointed, notice of said appointment shall be made to the board in writing, signed by the appointing authority, stating the name of the person for whom he is to serve, the name of the person to serve and his residence.

The alternate representative or representative pro tempore shall be subject to the same limitations as to number, residence, term and authority as the representative in whose place he serves. Unless so elected by the board, he shall hold no office on the board. He may receive such compensation as the board shall determine, but in no event an amount greater than the representative in whose stead he serves would have been entitled, as provided in section five.

Whenever an alternate representative is to serve in place of a duly appointed representative, notice shall be given to the board by the appointing authority of the time and date such service shall Commence and terminate. Such notice may be made at any time prior to the date and hour set for a regular meeting of the board, may be in writing or oral, and shall be made to the chairman, or secretary of the executive committee or the clerk of the board. In any dispute as to the right or ability of an alternate representative or representative pro tempore, to assume the responsibilities and authority of the representative of the city of Worcester, town or sewer district in whose stead a person allegedly acts, the board shall possess and exercise exclusive jurisdiction and determination.

SECTION 3. The Board shall appoint and determine the compensation of an engineer director who shall administer the affairs and direct the engineering work of the district as approved by the Board. The Board shall set forth the powers and duties of the engineer director in its by-laws. The engineer director may, upon approval of the Board, enter into contracts for professional or construction services to be provided to the district by private contractors. The engineer director shall be skilled in sanitary engineering practice and a registered professional engineer under the provisions of chapter one hundred and twelve of the General Laws, provided, however, a person eligible for registration under the provisions of chapter one hundred and twelve may be appointed acting engineer director and may serve in that capacity for a period of up to one year.

SECTION 4. The district shall have a seal consisting of a circular die bearing the words "Commonwealth of Massachusetts, Upper Blackstone Water Pollution Abatement District, 19 ", which seal may be used whenever deemed advisable by the Board on papers and documents issued or executed by the Board or by any officer or employee designated by the Board.

SECTION 5. The Board shall prepare and adopt by-laws describing and stipulating its organization and operations. The Board members shall annually in the month of April select a chairman, a vice chairman, and a secretary from among the membership who shall act as an executive committee. Members of the board may receive compensation from the district, which shall not exceed $2,500 per year for a board member, $3,250 per year for the vice chairman and secretary and $3,750 per year for the chairman. Compensation at the discretion of the board may be increased from time to time, but not more often than every 3 years, and not to exceed the annual

increase in the Consumer Price Index. Board members may be reimbursed for actual expenses incurred in performance of their duties on approval of the Board.

The Board may appoint and may at its pleasure remove a treasurer and a clerk, who shall not be members of the Board. Both offices, if Board deems it advisable, may be held by the same person. The treasurer shall give to the Board a bond payable to the district with a surety company authorized to transact business within the commonwealth and satisfactory to the Board as surety in such sums as the Board may prescribe and conditioned on the faithful performance of his duties. The duties of the treasurer and clerk shall be those usually appertaining to said offices, respectively, and in addition such as may from time to time be prescribed by the Board. The compensation of the treasurer and of the clerk shall be determined by the Board. The Board may retain legal counsel for any and all appropriate purposes.

The engineer director, with the approval of the Board, shall from time to time appoint or employ such other engineers and such experts, agents, officers, clerks and other employees as he deems necessary and shall determine their duties. The salaries or compensation of all persons appointed or employed under authority of this section shall be determined by the Board and together with other expenses shall be paid by the district and shall be considered a part of the expense of maintenance of the district.

The Board shall establish an office at the site of the treatment facilities in which its business may be conducted and at which maps, plans, documents, records, and other paper relating to its business, land, and other works and property in its charge, shall be kept.

It shall at all times keep full and accurate accounts of its receipts, expenditures, disbursements, assets and liabilities, which shall be open all times to inspection by the city, the towns or the sewer districts, who are members of the district or by any officer or duly appointed agent of the commonwealth.

The Board shall make a report each year of its activities for the preceding year and shall, prior to February 1, submit a copy to the state auditor and to the participating city, towns and districts. The reort shall also be submitted- to the Massachusetts department of public health and the division of water pollution control of the department of natural resources and the central Massachusetts regional planning commission.

SECTION 6. Said Board, acting for and on behalf of said district, may take by eminent domain under chapter seventy-nine of the General Laws, or acquire by purchase or otherwise, any lands, property, water rights, rights-of-way or easements, public or private in said district and in the town of Millbury, necessary for accomplishing any purpose mentioned in this act, and may construct such main drains and sewers under or over any bridge, railroad, railway, boulevard or other public way, or within the location of any railroad, and may enter upon and dig up any private land, public way or railroad location, for the purpose of laying such drains and sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act; provided that they shall not take in fee any land of a railroad corporation, and that they shall not enter upon or construct any drain or sewer within the location of any railroad corporation except at such time and in such manner as they may agree upon with such corporation, or, in case of failure to agree, as may be approved by the department of public utilities.

The Board, acting for the district, shall purchase, construct, maintain and operate in the district and in the town of Millbury such trunk sewers, pumping stations, intercepting sewers, connections, sewage treatment works, laboratories and other works as may be required for collecting, treating and disposing of sewage and other waterborne wastes to be discharged from the sewerage systems of said city, towns or districts. For such purposes the Board may make such contracts, or make other arrangements as it may deem necessary. No work shall be constructed until plans have been approved by the department of public health, division of water pollution control and the department of natural resources. Any construction, reconstruction, or extension of trunk sewers, pumping stations, intercepting sewers, connections, sewage treatment works, laboratories, and other works shall be referred

to the central Massachusetts regional planning commission for an advisory opinion as to the proposed works relationship to regional and intercommunity considerations and to its coordination with existing local and regional proposals.

No land may be purchased or otherwise acquired as a site for the treatment and disposal of sewage or waste water without the approval of the Massachusetts department of public health and division of water pollution control in accordance with the provisions of section six of chapter eighty-three of the General Laws.

The Board may sell by negotiation to the participating members of the district or at public auction any property, including land, acquired by it hereunder and which in its opinion is no longer needed in the performance of the powers and duties conferred and imposed on it by this act, and may from time to time lease any property which in its opinion is not then needed by it for the purposes of this act. The Board may enter upon any lands or waters for the purposes of making surveys, test pits and borings, and may take by eminent domain under said chapter seventy-nine, as amended, or acquire by purchase or otherwise, the right to temporarily occupy any lands necessary for the carrying out of the said purposes.

SECTION 7. The Board shall prevent the discharge into the sewers of substances which may damage or impair the sewage collection and sewage treatment system or interfere with its maintenance or operation. The Board shall have the right to enter any premises from which any sewer or drain is connected with any part of the sewerage system under its control or with any tributary sewerage or with the systems of any member city, town or sewer district, to determine the condition of said sewer, drain, sewage pumping station, trunk or treatment works, determine the amount and character of sewage, drainage or other wastes flowing therefrom, determine whether such sewage, drainage or other wastes does, or is likely to, damage or impair the sewerage system or the system of any member city, town or sewer district or interfere with its maintenance and operation, and inspect records required to be kept by regulation of the Board or other governmental entity. The Board shall, for the proper and reasonable operation of its works, make regulations as to the quantity and character of any sewage, drainage or other wastes discharged into any sewer under its control or any sewer tributary thereto, but such regulations shall not be less than those established by the division of water pollution control. Such regulations may impose federal, state and other industrial pretreatment requirements directly upon industrial and other users of the sewage collection systems tributary to the district's sewerage system and may require such industrial and other users to obtain discharge permits directly from the district. The district may charge permit application fees to recover the costs of processing permit applications and may directly bill industrial users to recover the district's annual cost of implementing an industrial pretreatment program. The district may enforce its regulations directly against industrial and other users of sewer systems tributary to district sewage works by court action seeking injunctive relief and penalties or by other action deemed appropriate by the district. Violation of district regulations is subject to a civil penalty up to ten thousand dollars, with each day of a continuing violation being a separate violation.

SECTION 8. No lands, rights-of-way, or other easements, property, structures, or rights acquired by the district, as herein provided, and located in the city or any town included in the district shall be assessed or taxed by the municipality if yielding no rent, but the district shall annually on July first pay to the city or town an amount equal to the tax it would receive upon the averages of the assessed value, which shall not include buildings or structures, for the three years last preceding the acquisition thereof, the value for each year being reduced by all abatements thereon. In the event there is a general revaluation of the assessed valuation of real property in any city or town of the district, the assessed valuations for the three-year period as determined above shall be increased or decreased in the same proportion that the aggregate value of all assessed real property in the city or town is increased or decreased.

SECTION 9. The district by vote of the Board is authorized to issue, from time to time, general obligation serial bonds or notes of the district to pay for the costs of capital outlays in connection with the collecting, treating and disposing of sewage and other waterborne wastes to be discharged from the sewage systems of its members

including the construction, acquisition and major rehabilitation of trunk sewers, pumping stations, intercepting sewers, connectors, sewage treatment works, laboratories and such other works as may be required and including land damages and costs of demolition of existing structures on land so acquired.

Said bonds to be issued in such amount or amounts as the district acting by and through the Board may determine and the district may refund any such bonds or notes. Such serial bonds or notes may be callable with or without premium and shall contain such terms and conditions, bear such rate or rates of interest, be sold in such manner, at public or private sale, and mature at such times and in such amounts as the Board shall determine, provided that each issue of such bonds or notes shall be payable in annual installments, the first of which shall be payable not later than two years after its date and the last of which shall be payable not later than thirty years from said date.

If the Board votes to issue serial bonds or notes, said Board may authorize the issuance, in the name of the district, of general obligations temporary notes for a period of not more than two years in anticipation of the money to be received from the sale of such serial bonds or notes. The time within which such serial notes or bonds shall be payable shall not be extended by reason of the making of such temporary loans beyond the time fixed in the order authorizing such serial bonds or notes.

For the purpose of paying expenses of operation, including, without limitation, any principal or interest due or about to become due on any bond or note issued by the district for which funds are not available, the Board, in the name of the district, is authorized to issue, from time to time, general obligation temporary notes of the district in anticipation of assessments levied against the members of said district in the year in which such notes are issued.

Temporary notes in anticipation of assessments shall be payable not more than one year from their date and shall not exceed in principal amount at any one time outstanding the amount of the assessment in anticipation of which they are issued.

Temporary notes issued under this section for a shorter period than the maximum permitted may be renewed by the issuance of other temporary notes maturing within the required period; provided, that the period from the date of issue of the original temporary note to the date of maturity of the renewal note shall not exceed the maximum period for which the original temporary note may have been issued. Such temporary notes or renewal notes may be sold at discount or with interest payable at or at and before maturity.

Notes or bonds authorized by this section shall be signed by the treasurer and countersigned by the chairman of the board and serial notes and bonds shall have the district seal affixed. Sections sixteen B and sixteen C of chapter forty-four shall be applicable to such bonds and notes.

Indebtedness incurred under this section shall not be included in computing the limit of indebtedness of any city or town or any portion of which is included in a district.

SECTION 10. The cost of original construction of the sewage treatment plant, outfall, laboratories and associated facilities, including principal payments and interest on the bonds issued for construction thereof, shall be apportioned among the participating member city, towns and sewer districts in the ratio of their particular populations to the total population of the district, according to the latest state or federal census.

The cost of original construction of trunk sewers, pumping stations, intercepting sewers, connections, and other works as may be required for the collecting of sewage, including principal payments and interest on the bonds issued for construction thereof, shall be apportioned among the participating member city, towns and sewer districts in the ratio of availability of the particular facility to each member, as determined by the ratio of the flow capacity of each member's connections into the facility to the entire connected capacity of the facility, as calculated by formulae and standards established by the board. These costs shall be prepared by the district with

the assistance of the city, towns and sewer districts and the central Massachusetts regional planning district commission. Upon acceptance of the provisions of this act by an eligible town or sewer district not previously a member, or upon the alteration of the flow capacity of any member's connection into the facility, the costs of construction shall be recalculated taking into account any new construction, and proper adjustments shall be made to the account of each member.

The operation and maintenance costs of the district and its treatment facilities shall be apportioned among the member city, towns and sewer districts on the basis of their contributions to the flow entering the district's facilities. The contribution of each member to the flow entering the district's facilities shall be determined annually by the board using either metered monitoring data or such other estimation techniques as the board may determine to properly represent the member's contribution to the facility. Commencing in fiscal year 2004, the contributions shall be determined using a 3-year moving average of data representing the 3 most recently completed fiscal years.

Upon acceptance of this act by an eligible town or sewer district not previously a member, the district shall determine the fair market value at that time of the assets of the district, including capital assets. The district shall determine the value of the assets of the district including, but not limited to land, structures, equipment, other improvements, inventories and restricted and unrestricted reserve funds, but excluding any debt service costs associated with bonded indebtedness for which payments are yet due. In establishing the value of the land, structures, equipment and other improvements, the district shall, not less frequently than once every 10 years, use the services of an independent appraiser to estimate the value of such land structures, equipment and other improvements, taking into account the replacement costs of such land, structures, equipment and other improvements and the actual physical and functional depreciation thereof. The district shall use a cost index that it considers appropriate to adjust the most recent estimated replacement costs to the year in which an eligible town or sewer district proposes to become a member of the district. The district shall also adjust the physical and functional depreciation by the same index and shall include additional depreciation reflecting the amount of time from the date of the last appraisal to the year in which an eligible town or sewer district proposes to become a member of the district. If the district has made additional investments in structures, equipment or other improvements since the time of the most recent appraisal, the value of the additional investments shall be computed as the cost of such investments, adjusted according to a cost index the district deems appropriate to adjust the additional investments to the year in which an eligible town or sewer district proposes to become a member of the district and deducting therefrom depreciation of the investment as determined by the district. The appraised value, indexed as appropriate, together with the value of additional investments and the original costs of land acquired by the district, net of depreciated contributions in aid of construction and net of principal of debt outstanding, shall be used to establish the buy-in costs paid by such eligible town or sewer district. The cost of membership in the district shall be computed as the proportion of the population of the new member community or sewer district to the revised total population of the district, new plus previous members, times the fair market value. Buy-in costs shall be apportioned and paid to previous members on the basis of population, according to the most recent federal census.

SECTION 11. The board shall annually determine the amounts required for the payment of principal and interest on such bonds and notes issued or to be renewed by the district which will be due during the ensuing fiscal year and shall apportion the amounts so determined among the several members of the district in accordance with the provisions of this act, shall also annually determine the amounts necessary to be raised to maintain and operate the district during the said year including capital outlay items the cost of which is not to be funded and for all other matters for which the district is required to raise money and shall apportion among the several members of the district the amounts so determined in accordance with the provisions of this act. Each amount so apportioned for each member shall, prior to January thirty-first of the current fiscal year, be certified by the board to the assessors of each city, town or district who are members of such district. The assessors of each city, town or other district shall without further vote include each amount so certified in those amounts to be annually raised by taxes under section twenty-three of chapter fifty-nine of the General Laws. The respective

city, town or district treasurer shall pay the amount so certified to the treasurer of the district in substantially equal quarterly payments on or before July fifteenth, October fifteenth, January fifteenth, and April fifteenth of the ensuing fiscal year.

A city, town or district who have been assessed may raise all or a portion of the amounts certified annually by the district to the assessors of each city, town or district as provided in this act, through equitable and proportional charges against inhabitants, corporations and other users of the service rendered by the district in each such city, town or district. For the purpose of establishing an equitable and proportional schedule of reasonable charges, the property benefited by the services of the district may be classified, taking into consideration the character and volume of the sewage or industrial or other wastes and the nature of the use made of the sewage system, including the facilities. The charges may include standby charges to property not connected but for which the district's facilities have been made available. The failure of such user charges to raise the amounts required by the district in any year shall not relieve any city, town or district from its obligation to provide the amounts assessed by the district hereunder.

Nothing in the procedure for arbitration authorized in section eleven A shall relieve any treasurer of the city, towns or sewer districts from making timely payments to the treasurer of the district of the full amounts assessed.

SECTION 11A. In the event that within ninety days of the receipt by the board of assessors of each city, town or sewer district of any assessment as determined and apportioned above, the appropriate legislative body of any city, town or sewer district, by resolution, may question any fact used in the formulae for determination of the total amount to be apportioned or the apportionment thereof to the city, towns or sewer districts and request a review thereof by the board.

The board shall forthwith cause a review of such apportionment and shall publish its findings no later than thirty calendar days from the receipt of such request.

The board or the aggrieved city, town or sewer district may, by resolution adopted no later than ninety calendar days from the receipt of such findings, submit the questions raised to a fact finding arbitration of three persons, not residents of the district, one to be appointed by the aggrieved member, one to be appointed by the board and one to be appointed by the auditor of the commonwealth. The three persons, so appointed, shall consider all pertinent data, make such audits, examinations, inquiries and surveys as they deem necessary, and shall submit a finding, which shall be binding on all parties. The cost of such arbitration, if any, shall be paid by the district as an expense of the then current year and assessed to the district and the aggrieved member in a proportion to be determined by the finding. If such finding shall result in an adjustment of the apportionment of the assessment to the city or any town or sewer district, such adjustment shall be made by the board in the next annual apportionment to be certified to the respective board of assessors.

SECTION 12. To meet the cost of construction, maintenance and operation of the works authorized by this act, the district may file application for, or accept and use, any federal or state funds or any federal or state assistance, or both, provided therefor under any federal or state law, or accept and use any funds from other sources.

The district may file application for, accept and use any federal or state funds available for the purpose of constructing a facility for training and technical assistance in wastewater treatment. Said district may enter into interagency agreements with the commonwealth for the purpose of providing facilities for training and technical assistance in wastewater treatment.

SECTION 13. At any time not less than eight years after the acceptance of this act by a town or sewer district, said town or sewer district may, after approval by two thirds of the qualified voters present and voting at any annual or special town meeting, or at a meeting legally called of those inhabitants liable to taxation within a sewer

district, notify the Board of its desire to withdraw from the district. Such withdrawal shall become effective in not less than two years after receipt of such notice by the Board, and only after approval by a majority of the Board.

Value of any facilities involved in such purchase or reimbursement shall be determined in accordance with methods described in Massachusetts General Laws, chapter seventy-nine.

SECTION 14. Upon the establishment of the district all employees of the participating city, towns and districts who consent and whose employment is directly related to projects to be taken over by the district shall be transferred to the district and shall continue to perform the same duties at a salary not less than theretofore and every employee so transferred who immediately prior to such transfer was subject to section nine A of chapter thirty or to chapter thirty-one of the General Laws under a permanent appointment and who has served a probationary period shall continue to serve subject to the provisions of said section nine A of chapter thirty or to sections forty-three and forty-five of said chapter thirty-one as the case may be; whether or not thereafter reclassified, and shall retain all rights to holidays, sick leave and vacations in effect on the effective date of this act; provided, that any person transferred who was not subject to said section nine A or said chapter thirty-one and persons appointed after the effective date of this act shall not be subject to said section nine A of chapter thirty or to any provisions of said chapter thirty-one.

Every employee who upon transfer to the district is covered by the group insurance provided by chapter thirty-two A of the General Laws shall continue in uninterrupted coverage and all other employees of the district are hereby likewise made eligible for said group insurance to the same extent as if they were employees of the commonwealth; provided, that the share of the cost of such insurance shall, with respect to the employees of the district, be borne by said district. The district shall forward its contribution, together with all amounts withheld from the salaries or wages of its employees as provided in paragraph (a) of section eight of said chapter thirty-two A and all amounts paid by an employee as provided in paragraph (b) of said section, to the state employees group insurance commission at such time and in such manner as said commission may prescribe.

Every employee who immediately prior to being transferred to the district by this section is a member of the retirement system of their respective city, town or district shall have their retirement rights transferred into the state retirement system. All other employees of the district shall be required to become members of the state retirement system in the same manner and subject to time same laws, rules and regulations as persons entering the employ of the commonwealth. The district shall deduct from the wages of its employees and pay over to the state retirement board, such sums as the commonwealth or the city, town or district would deduct and pay over if such person were an employee of the commonwealth or the city, town or district; and at such times as the commissioner of insurance shall from time to time prescribe, the district shall pay to the state retirement board such sums as said commissioner shall from time to time determine the city, town or district would be obliged to pay if such person were its employee, including, accruals for prior service and accidental disability.

The district shall reimburse the commonwealth its proportionate share of any amounts expended by the commonwealth under the provisions of chapter thirty-two of the General Laws for retirement allowances to or on account of its employees.

Every person who immediately prior to being transferred to the district was subject to the provisions of sections fifty-six to sixty, inclusive, of chapter thirty-two of the General Laws, shall continue subject to the provisions of said sections; provided, however, that the words "retiring authority", as used in said section shall mean the members of said district; and provided further, that the amount of all retirement allowances payable under said sections by virtue of this act shall be paid by the district and the proper city, town or district shall reimburse the district for its proportionate share of the amounts so paid. Upon the retirement of any such person under said sections fifty-six to sixty, inclusive, the said city, town or district shall refund to the person so retired the amount of his accumulated deductions.