



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

BY OVERNIGHT MAIL AND ELECTRONIC SUBMISSION

May 11, 2009

Eurika Durr  
Clerk of the Board  
United States Environmental Appeals Board  
Colorado Building  
1341 G Street, NW  
Suite 600  
Washington, D.C. 20005

Re: Upper Blackstone Water Pollution Abatement District  
Region 1's Motion to Dismiss As Moot Petitions for Review of Permit  
Requirements Related to Total Aluminum  
NPDES Appeal Nos. 08-11 and 08-14  
NPDES Permit No. MA 0102369

Dear Ms. Durr:

In connection with the above-referenced permit appeals, please find enclosed for docketing and review Region 1's Motion to Dismiss as Moot Petitions for Review of Permit Requirements Related to Total Aluminum, together with a certification of service. Electronic copies of Region 1's submission will also be posted to the CDX filing system.

If you have any questions, please do not hesitate to contact me at 617-918-1711.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen McGuire".

Karen McGuire, Esq.  
US EPA-Region 1

Enclosures

cc: Recipients Listed on Enclosed Certificate of Service

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

_____	)	
In the Matter of:	)	
	)	
Upper Blackstone Water	)	NPDES Appeal Nos. 08-11 and
Pollution Abatement District	)	08-14
	)	
NPDES Permit No. MA 0102369	)	
	)	
_____	)	

**REGION 1'S MOTION TO DISMISS AS MOOT PETITIONS FOR REVIEW OF  
PERMIT REQUIREMENTS RELATED TO TOTAL ALUMINUM**

The Region moves to dismiss as moot petitions filed by the Upper Blackstone Water Pollution Abatement District (NPDES Appeal No. 08-11) and Trout Unlimited (NPDES Appeal No. 08-14) challenging requirements related to aluminum in the above-referenced NPDES permit. As is detailed more fully below, the Region has withdrawn the relevant contested provisions and has modified the permit. Accordingly, there is no reason to reach petitioners' arguments.

As grounds for this motion, the Region states as follows:

1. The Region reissued a final NPDES permit to the Upper Blackstone Water Pollution Abatement District ("the District") on August 22, 2008. Among other requirements, the Permit included monthly monitoring and reporting requirements for total aluminum, but no effluent limitation for total aluminum. *See Permit* at Part I.A, appended as Ex. A.
2. Both Trout Unlimited and the District filed petitions for review challenging the Region's decision-making related to aluminum. Trout Unlimited argued the Region

should have included an effluent limitation for aluminum (not simply monitoring requirements) since data indicate that the levels of aluminum currently discharged by the District are detrimental to fish populations in the Blackstone River. *See Trout Unlimited Petition* at 2. In its petition for review, the District challenged the need for monthly monitoring requirements at all. *See Dist. Pet.* at 55-56.

3. In its *Opposition to Petitions for Review* filed on December 18, 2008, the Region indicated that, upon review of Trout Unlimited's petition, the Region intended to propose a modification to the permit. *See Region's Opposition* at n.1 and 135. The Region issued a draft permit modification on January 30, 2009. After evaluation of comments received during the public comment period, the Region issued a final permit modification on April 15, 2009. *See Permit Modification*, appended as Ex. B. The final permit modification includes an effluent limitation for total aluminum and associated weekly monitoring and reporting requirements. *See Permit Modification* at page 2.

4. By letter dated May 11, 2009, the Region withdrew the monthly monitoring and reporting requirements in the original permit. *See Letter from Ira Leighton, Acting Regional Administrator*, Ex. C. As the District had contested the monthly monitoring and reporting requirements in its petition for review, these conditions had been stayed pursuant to 40 C.F.R. §124.60(b)(1).

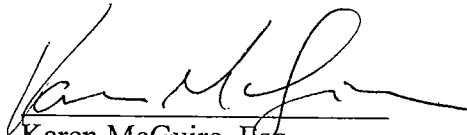
5. In light of the Region's issuance of a final permit modification that includes an effluent limitation for aluminum, there is no need for the Board to reach Trout Unlimited's argument that the permit should contain such a limit. (Trout Unlimited sought review solely on this ground.) Similarly, as the Region has withdrawn the monthly monitoring requirement contested by the District, the District's appeal on this

issue is moot. *See In Re: San Jacinto River Authority*, NPDES Appeal 07-19 (March 28, 2008) (holding that Region's withdrawal of contested permit provisions rendered the petition for review moot).

6. Accordingly, the Board should dismiss Trout Unlimited's petition for review as moot. The Board should also dismiss as moot the argument raised in the District's petition challenging the monthly monitoring and reporting requirements for aluminum.

Respectfully submitted by EPA-Region 1,

Dated: May 11, 2009



Karen McGuire, Esq.  
Amanda Helwig, Esq.  
U.S. EPA Region 1  
One Congress Street, Suite 1100 (CDW)  
Boston, MA 02114-2023  
Tel: (617) 918-1711  
Fax: (617) 918-0711  
[m McGuire.karen@epa.gov](mailto:m McGuire.karen@epa.gov)

AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. § 1251 et seq.; the "CWA"),

**Upper Blackstone Water Pollution Abatement District (UBWPAD)**

is authorized to discharge from the facility located at:

**Upper Blackstone Water Pollution Abatement District  
50 Route 20  
Millbury, MA 01527**

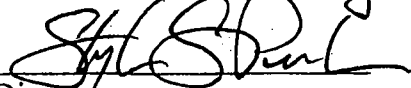
to receiving water named: **Blackstone River**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The City of Worcester, the Towns of Millbury, Auburn, Holden, West Boylston and Rutland, and the Cherry Valley Sewer District discharge wastewater into the UBWPAD facility and are co-permittees for Part D and Part E and are responsible for implementation of the operation and maintenance and reporting requirements of Parts D and E related to their respective system. The Towns of Sutton, Shrewsbury, Oxford and Paxton are also authorized to discharge wastewater into the UBWPAD facility. Only municipalities specifically listed above are authorized to discharge wastewater into the UBWPAD facility. This permit does not restrict UBWPAD from accepting sludge or septage from other entities.

This permit shall become effective on October 1, 2008.

This permit consists of 19 pages in Part I including effluent limitations and monitoring requirements, Part II including General Conditions and Definitions, and Attachments A through C. This permit and the authorization to discharge expire at midnight, five (5) years from the effective date. This permit supersedes the permit issued on September 30, 1999 and modified on December 19, 2001.

Signed this 22<sup>nd</sup> day of August, 2008



Director  
Office of Ecosystem Protection  
Environmental Protection Agency  
Boston, MA

**EXHIBIT A**

## PART I

A.1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge treated sewage from outfall serial numbers 001 and 001A (high flow outfall) to the Blackstone River. Such discharges shall be limited and monitored as follows:

PARAMETER	EFFLUENT LIMITS					MEASUREMENT FREQUENCY
	AVERAGE MONTHLY	AVERAGE WEEKLY	AVERAGE MONTHLY	AVERAGE WEEKLY	MAXIMUM DAILY	
FLOW <sup>1</sup>	*****	*****	56 MGD	*****	*****	CONTINUOUS
FLOW <sup>1</sup>	*****	*****	Report MGD	*****	Report MGD	CONTINUOUS
CBOD <sub>5</sub> <sup>2</sup> (June 1 - October 31)	4670 lbs/Day	Report lbs/Day	10 mg/l	15 mg/l	17 mg/l	DAILY
CBOD <sub>5</sub> <sup>2</sup> (November 1 - April 30)	11,676 lbs/Day	Report lbs/Day	25 mg/l	40 mg/l	45 mg/l	DAILY
CBOD <sub>5</sub> <sup>2</sup> (May)	9,341 lbs/Day	Report lbs/Day	20mg/l	30 mg/l	33 mg/l	DAILY
TSS <sup>2</sup> (June 1 - October 31)	7,006 lbs/Day	Report lbs/Day	15 mg/l	15 mg/l	22 mg/l	DAILY
TSS <sup>2</sup> (November 1 - April 30)	14,011 lbs/Day	Report lbs/Day	30 mg/l	45 mg/l	50 mg/l	DAILY
TSS <sup>2</sup> (May)	9,341 lbs/Day	Report lbs/Day	20 mg/l	30 mg/l	33 mg/l	DAILY
pH RANGE <sup>4</sup>	6.5 - 8.3 SU (SEE PERMIT PAGE 9 OF 19, PARAGRAPH I.A.1.b.)					DAILY

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<u>EFFLUENT CHARACTERISTIC</u>					<u>EFFLUENT LIMITS</u>					<u>MONITORING REQUIREMENTS</u>		
<u>PARAMETER</u>	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>MAXIMUM DAILY</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>	
FECAL COLIFORM, <sup>4, 6</sup> cfu/100ml (April 1 - October 31)	*****	*****	200	*****	*****	*****	400	DAILY	GRAB <sup>5</sup>	DAILY	GRAB <sup>5</sup>	
FECAL COLIFORM, <sup>6</sup> cfu/100ml (November 1 - March 31)	*****	*****	571	*****	*****	*****	1,429	DAILY	GRAB <sup>5</sup>	DAILY	GRAB <sup>5</sup>	
TOTAL RESIDUAL CHLORINE <sup>7</sup>	*****	*****	12 ug/l	*****	*****	*****	21 ug/l	DAILY	GRAB <sup>5</sup>	DAILY	GRAB <sup>5</sup>	
TOTAL RESIDUAL CHLORINE <sup>8</sup>	*****	*****	Report mg/l	*****	*****	*****	Report mg/l	CONTINUOUS	RECORDER	CONTINUOUS	RECORDER	
DISSOLVED OXYGEN <sup>4</sup>	NOT LESS THAN 6.0 mg/l											
AMMONIA-NITROGEN (June 1 - October 31)	934 lbs/Day	Report lbs/Day	2.0 mg/l	Report lbs/Day	4.0 mg/l	Report mg/l	Report mg/l	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	
AMMONIA-NITROGEN (November)	4,670 lbs/Day	Report lbs/Day	10.0 mg/l	Report lbs/Day	20.0 mg/l	Report mg/l	Report mg/l	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	
AMMONIA-NITROGEN (December 1 - April 30)	5,600 lbs/Day	Report lbs/Day	12.0 mg/l	Report lbs/Day	24.0 mg/l	Report mg/l	Report mg/l	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	
AMMONIA-NITROGEN (May)	2,330 lbs/Day	Report lbs/Day	5.0 mg/l	Report lbs/Day	10.0 mg/l	Report mg/l	Report mg/l	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	
TOTAL NITROGEN <sup>9</sup> (May 1 - October 31)	Report lbs/Day	Report lbs/Day	5.0 mg/l	Report lbs/Day	*****	*****	Report mg/l	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>	

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<u>EFFLUENT CHARACTERISTIC</u>	<u>EFFLUENT LIMITS</u>							<u>MONITORING REQUIREMENTS</u>	
	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>MAXIMUM DAILY</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>		
TOTAL NITROGEN (November 1 – April 30)	Report lbs/Day	Report lbs/Day	Report mg/l	Report mg/l	Report mg/l	Report mg/l	24-HOUR COMPOSITE <sup>3</sup>	2/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL PHOSPHORUS <sup>10</sup> (April 1 – October 31)	Report lbs/Day	Report lbs/Day	0.1 mg/l	Report mg/l	Report mg/l	Report mg/l	24-HOUR COMPOSITE <sup>3</sup>	3/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL PHOSPHORUS <sup>11</sup> (November 1 – March 31)	Report lbs/Day	Report lbs/Day	1.0 mg/l	Report mg/l	Report mg/l	Report mg/l	24-HOUR COMPOSITE <sup>3</sup>	2/WEEK	24-HOUR COMPOSITE <sup>3</sup>
DISSOLVED ORTHO <sup>11</sup> PHOSPHORUS (November 1 – March 31)	Report lbs/Day	Report lbs/Day	Report mg/l	Report mg/l	Report mg/l	Report mg/l	24-HOUR COMPOSITE <sup>3</sup>	2/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL COPPER <sup>12</sup>	*****	*****	7.2 ug/l	*****	10.2 ug/l	10.2 ug/l	24-HOUR COMPOSITE <sup>3</sup>	1/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL ZINC	*****	*****	91.3 ug/l	*****	91.3 ug/l	91.3 ug/l	24-HOUR COMPOSITE <sup>3</sup>	1/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL CADMIUM <sup>12</sup>	*****	*****	0.2 ug/l	*****	1.5 ug/l	1.5 ug/l	24-HOUR COMPOSITE <sup>3</sup>	1/WEEK	24-HOUR COMPOSITE <sup>3</sup>
TOTAL ALUMINUM	*****	*****	Report mg/l	*****	*****	*****	24-HOUR COMPOSITE <sup>3</sup>	1/MONTH	24-HOUR COMPOSITE <sup>3</sup>
TOTAL LEAD <sup>12</sup>	*****	*****	Report mg/l	*****	*****	*****	24-HOUR COMPOSITE <sup>3</sup>	1/MONTH	24-HOUR COMPOSITE <sup>3</sup>



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TOTAL NICKEL	*****	*****	Report mg/l	*****	*****	1/QUARTER	24-HOUR COMPOSITE <sup>3</sup>
WHOLE EFFLUENT TOXICITY <sup>13,14,15</sup>	*****	*****	Acute Chronic C-NOEC $\geq 90\%$	LC <sub>50</sub> $\geq 100\%$		6/YEAR	24-HOUR COMPOSITE <sup>3</sup>

All sampling shall be representative of the effluent that is discharged through outfalls 001 and 001A to the Blackstone River. A routine sampling program shall be developed in which samples from outfall 001 are taken at the same location, same time and same days of every month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented in correspondence appended to the applicable discharge monitoring report. In addition, all samples shall be analyzed using the analytical methods approved by EPA in accordance with 40 CFR §136.

**Footnotes:**

1. This is an annual average combined flow limit for outfalls 001 and 001A, which shall be reported as a rolling average. The first value will be calculated using the monthly average combined flow from outfalls 001 and 001A for the first full month ending after the effective date of the permit and the eleven previous monthly average combined flows from outfalls 001 and 001A. Each subsequent month's Discharge Monitoring Reports (DMR) will report the annual average flow that is calculated from that month and the previous 11 months. The monthly average and maximum daily combined flows for each month shall also be reported. For each month that outfall 001A is activated, the flow volume and duration for each day that the outfall is activated shall be reported on a separate sheet of paper and submitted with the monthly DMR.

2. Sampling required for influent and effluent.

3. For each day that there is no discharge from outfall 001A, 24-hour composite samples will consist of at least twenty four (24) grab samples taken from outfall 001 during one consecutive 24-hour period, either collected at equal intervals and combined proportional to flow or continuously collected proportionally to flow.

For each day that there is a discharge from outfall 001A, 24-hour composite samples will consist of hourly grab samples taken from outfall 001A for the duration of the discharge, either collected at equal intervals and combined proportional to flow or continuously collected proportionally to flow, and combined proportional to flow with the 24-hour composite sample from outfall 001. The first sample shall be taken within the first hour of the discharge from outfall 001A.

4. Consistent with minimum requirements set forth in historical state certifications and based on antibacksliding requirements.

5. If outfall 001A is not active, a grab sample shall consist of a single grab sample taken from outfall 001 in accordance with the routine sampling program.

For each day that there is a discharge from outfall 001A, grab samples for pH, fecal coliform and total chlorine residual analysis shall be taken from outfall 001A within the first hour of the discharge, and every three hours thereafter for the duration of the discharge and a grab sample for dissolved oxygen shall be taken within the first hour of the discharge. Concurrent grab samples for pH, fecal coliform, total chlorine residual and dissolved oxygen shall be

MODIFICATION OF AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. § 1251 *et seq.*; the "CWA"),

**Upper Blackstone Water Pollution Abatement District (UBWPAD)**

is authorized to discharge from the facility located at:

**Upper Blackstone Water Pollution Abatement District  
50 Route 20  
Millbury, MA 01527**

to receiving water named: **Blackstone River**

in accordance with effluent limitations, monitoring requirements and other conditions set forth in the permit issued on August 22, 2008, that went into effect on January 1, 2009, with the following changes as set forth herein and listed as follows:


**Part I.A.1., Addition of a monthly average effluent limitation for total aluminum and associated monitoring requirement.**

This permit modification shall become effective June 1, 2009.

This permit modification and the authorization to discharge shall expire at midnight, September 30, 2013. This permit modification modifies the conditions included in Part I.A.1.a. of the portion of the final permit that went into effect on January 1, 2009.

This permit modification consists of 1 attached page.

Signed this 15<sup>th</sup> day of April 2009

  
\_\_\_\_\_  
Director  
Office of Ecosystem Protection  
Environmental Protection Agency  
Boston, MA

**EXHIBIT B**

**PART I**

The following modifications are made to the effluent limitations and monitoring requirements: Addition of the following limitation and associated monitoring requirement.

A.1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge treated effluent from outfall serial numbers 001 and 001A (high flow outfall) to the Blackstone River. Such discharges shall be limited and monitored as follows:

<u>EFFLUENT CHARACTERISTIC</u>	<u>EFFLUENT LIMITS</u>					<u>MONITORING FREQUENCY</u>
	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>AVERAGE MONTHLY</u>	<u>AVERAGE WEEKLY</u>	<u>MAXIMUM DAILY</u>	<u>MEASUREMENT FREQUENCY</u>
TOTAL ALUMINUM	*****	*****	87 µg/l	*****	Report µg/l	1

All sampling shall be representative of the effluent that is discharged through outfalls 001 and 001A to the Blackstone River. A sampling program shall be developed in which samples from outfall 001 are taken at the same location, same time and same days of the week. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation shall be documented and appended to the applicable discharge monitoring report. In addition, all samples shall be analyzed using the analytical methods in accordance with 40 CFR §136.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

VIA OVERNIGHT MAIL AND ELECTRONIC SUBMISSION

May 11, 2009

Ms. Eurika Durr  
Clerk of the Board  
U.S. EPA Environmental Appeals Board (MC 1103B)  
Colorado Building  
1341 G Street, N.W., Suite 600

Thomas K. Walsh, Director  
Upper Blackstone Water Pollution Abatement District  
50 Route 20  
Millbury, MA 01527

Re: Notice of Withdrawal of Contested Condition  
Upper Blackstone Water Pollution Abatement District  
NPDES Permit No. MA 0102369  
NPDES Appeal No. 08-11

Dear Ms. Durr and Mr. Walsh:

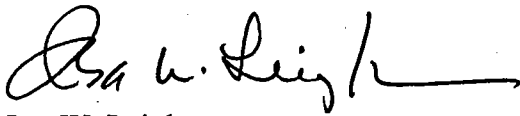
In connection with the above-referenced NPDES permit and appeal, the Region provides notice of its determination to withdraw the total aluminum monthly monitoring and reporting requirements in the permit issued on August 22, 2008 pursuant to 40 C.F.R. § 124.19(d).

The Upper Blackstone Water Pollution Abatement District ("the District") appealed certain provisions of the permit via a petition for review filed on September 18, 2008, and a supplemental petition filed on October 8, 2008. Among other things, the District requested the Board's review of the permit's imposition of monthly monitoring and reporting

n.1 and 135. The Region issued a draft permit modification on January 30, 2009. After evaluation of comments received during the public comment period, the Region issued a final permit modification on April 15, 2009. The final permit modification includes an effluent limitation for total aluminum and weekly monitoring and reporting requirements. See *Permit Modification* at page 2. (The final permit modification can be found at <http://www.epa.gov/region1/npdes/permits/2009/finalma0102369permitmodification.pdf>).

Having issued a final permit modification that includes weekly monitoring and reporting requirements for total aluminum, the Region withdraws the permit's original monthly monitoring and reporting requirements for total aluminum. If you have any questions regarding this matter, please feel free to contact Karen McGuire, the Region's counsel in this matter, at 617-918-1711.

Sincerely,



Ira. W. Leighton  
Acting Regional Administrator

cc: Robert L. Moylan, Jr., Commissioner, Dept. of Public Works & Parks, Worcester  
James Shuris, Director of Public Works, Town of Holden  
J. Bradford Lange, Sewer Commission, Town of Millbury  
Donald G. Manseau, Cherry Valley Sewer District  
Town of Auburn, Board of Selectmen  
Town of Rutland, Board of Selectmen  
Town of West Boylston, Board of Selectmen  
David M. Moore, City Solicitor, Worcester  
Roland C. Gauvin, Northern RI Chapter 737, Trout Unlimited  
Nathan A. Stokes, Esq., Barnes & Thornburg  
Ned Bartlett, Esq., Bowditch & Dewey  
David Mears, Esq., Vermont Law School  
Christopher Kiliañ, Esq., Conservation Law Foundation  
Karen L. Crocker, Counsel, Mass DEP

## CERTIFICATE OF SERVICE

I certify that copies of the Region's Motion to Dismiss as Moot in connection with NPDES Appeal Nos. 08-11 and 08-14, were sent to the following persons in the manner indicated:

By Overnight Mail and Electronic Submission:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Colorado Building  
1341 G Street, NW  
Suite 600  
Washington, D.C. 20005

By First Class U.S. Mail:

Nathan A. Stokes, Esq.  
Barnes & Thornburg, LLP  
750 17<sup>th</sup> Street, NW  
Suite 900  
Washington, D.C. 20006

Ned Barlett, Esq.  
Bowditch & Dewey, LLP  
Metro West Office  
175 Crossing Boulevard  
Framingham, MA 01702

Karen L. Crocker, Counsel  
Massachusetts Department of Environmental Protection  
Office of General Counsel  
One Winter Street  
Boston, MA 02108

Christopher M. Kilian, Esq.  
Conservation Law Foundation  
16 East State Street, Suite 4  
Montpelier, VT 05602

David K. Mears, Esq.  
Environmental & Natural Resources Law Clinic  
Vermont Law School  
P.O. Box 96 Chelsea Street  
South Royalton, VT 05068

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

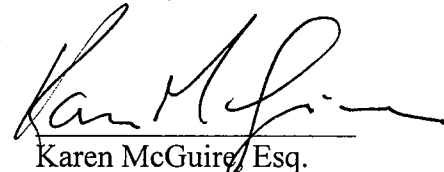
James Shuris, P.E., MBA  
Director of Public Works  
Town of Holden, Massachusetts  
1196 Main Street  
Holden, MA 01520

J. Bradford Lange, Vice Chairman  
Sewer Commission  
Town of Millbury, Massachusetts  
Municipal Office Building  
127 Elm Street  
Millbury, MA 01527

Donald G. Manseau, Chairman  
Cherry Valley Sewer District  
P.O. Box 476  
Leicester, MA 01524

David M. Moore, Esq.  
City Solicitor, City of Worcester  
City Hall  
455 Main Street  
Worcester, MA 01608

Dated: May 11, 2009



Karen McGuire, Esq.  
U.S. EPA, Region 1  
1 Congress Street 1100 (CDW)  
Boston, MA 02114-2023  
Tel: (617) 918-1711  
Fax: (617) 918-0711