

MIRICK O'CONNELL
ATTORNEYS AT LAW
MIRICK, O'CONNELL, DEMALIFE & LOUGEE, LLP

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November 23, 2005
U.S. E.P.A. APPEALS BOARD

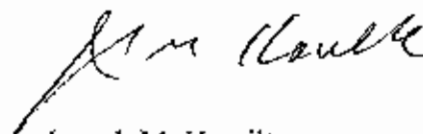
U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Westborough Treatment Plant
Permit No.: MA0100412
Appeal Nos.: NPDES 05-07 and 05-08

Dear Sir/Madam:

Enclosed are two copies of the Westborough Treatment Plant Board's opposition to the motion of the Town of Stow for leave to file an amicus brief.

Very truly yours,



Joseph M. Hamilton

JMH/kjg
Enclosure

cc: Jonathan D. Witten, Esq.
Peter Shelley, Esq.
Donald L. Anglehart, Esq.
Kenneth L. Kimmell, Esq.
Samir Bukhari, Esq.

MIRICK O'CONNELL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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ENVIR. APPEALS BOARD

Westborough Treatment Plant

NPDES Permit No. MA0100412

NPDES Appeal No. 05-07

NPDES Appeal No. 05-08

WESTBOROUGH TREATMENT PLANT BOARD'S OPPOSITION TO THE TOWN OF
STOW'S MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

I. NATURE AND STATUS OF PROCEEDINGS

The Westborough Treatment Plant Board (the "Board") has been issued NPDES Permit No. MA0100412 (the "Permit"). The Board timely filed a request for review of certain conditions contained in the Permit. In addition, The Organization for the Assabet River ("OAR") has also filed a petition for review.

By motion dated November 17, 2005, the Town of Stow filed a motion for leave to file an amicus curiae brief in the proceedings regarding the Board's petition, as well as OAR's petition.¹ The Board opposes the Town of Stow's motion to submit an amicus curiae brief on the grounds that the applicable statute and regulations governing this NPDES appeal do not provide for nor permit submission of amicus briefs.

II. ARGUMENT

The EAB Lacks Authority To Allow Stow To Submit An Amicus Brief At
This Stage Of The Proceedings.

There is no provision in the United States Code, 40 C.F.R. §124 (the regulations governing NPDES appeal proceedings) or the Practice Manual of the EAB which allows for the submission of an amicus brief at this stage of NPDES appeal proceedings. Indeed, the statute,

¹ The Town of Stow has also sought to intervene in the pending petitions regarding the City of Marlborough's Westerly Wastewater Treatment Plant.

regulations and Practice Manual are designed to allow participation in an appeal at this stage only by those persons "who file comments on the draft permit or participated in the public hearing ..."
See 40 C.F.R. §124.19(a).

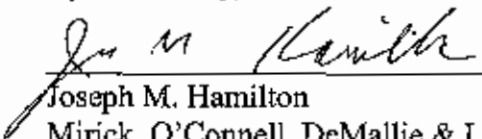
The applicable regulations allow interested persons to file an amicus brief, but only after the EAB has issued an order granting the petition for review. See 40 C.F.R. §124.19(c). This was the basis for the EAB to allow amicus briefs in the case of In Re Dominion Energy Brayton Point, LLC, NPDES Appeal No. 03-12 (EAB, Feb. 19, 2004) (order granting review, denying intervenor status but allowing participation as amicus). In this case, the EAB has not yet granted or denied review of the Board's or OAR's petitions.

Allowing Stow to submit an amicus brief circumvents the regulatory framework and statutory intent by allowing parties that have had no participation in the public process leading up to the issuance of the permit to participate after petitions have been filed. The rationale preventing the filing of an amicus brief at this stage is particularly appropriate with respect to Stow which, while stating it is "profoundly impacted by the degradation of water quality caused by effluent from the" treatment plants, apparently failed to submit any comments regarding the draft permits and failed to participate in the public hearing process. The EAB should not excuse Stow's failure to appropriately participate in the public process leading up to the issuance of this permit by allowing it to submit an amicus brief at this stage of the proceedings.²

² Indeed, Stow has gone so far as to actually submit its brief along with its motion. In addition to denying its motion for leave to file such a brief, the brief submitted by Stow should be stricken from the record. Moreover, the brief is replete with unsubstantiated allegations purported to be facts without any reference or support in the administrative record.

WESTBOROUGH TREATMENT
PLANT BOARD

By its attorney,


Joseph M. Hamilton
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester, MA 01608-1477
Phone: (508) 791-8500
Fax: (508) 791-8502

Dated: 11/23/05

CERTIFICATE OF SERVICE

I, Joseph M. Hamilton, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, first class mail, postage prepaid, to the following:

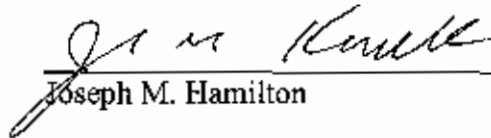
Peter Shelley, Esq.
John A. Pike, Esq.
John L. Davenport, Esq.
Conservation Law Foundation
62 Summer Street
Boston, MA 02110-1016

Kenneth L. Kimmell, Esq.
Bernstein, Cushner & Kimmell, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116

Donald L. Angelhart, Esq.
Gadsby Hannah LLP
225 Franklin Street
Boston, MA 02110

Samir Bukhari, Esq.
Office of Regional Counsel
U.S. EPA, Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023

Jonathan D. Witten, Esq.
Barbara Huggins, Esq.
Daley and Witten, LLC
156 Duck Hill Road
Duxbury, MA 02332


Joseph M. Hamilton

Dated: 11/23/05