



Date: January 12, 2006

**U.S. Environmental Protection Agency
Office of Regional Counsel
One Congress Street, Suite 1100
Boston, MA 02114-2023
Phone: (617) 918-1148
Fax: (617) 918-1029**

PLEASE DELIVER TO:

**Eurika Durr
Clerk, EPA Environmental Appeals Board
(202) 233-0121**

**From: Samir Bukhari
Attorney, Office of Regional Counsel
EPA, Region 1**

Number of Pages to Follow: 6

Re:

**Status Report on Mediation and Permit Modification Proceedings
City of Marlborough, Marlborough Westerly Wastewater Treatment
Facility
NPDES Appeal Nos. 05-05 and 05-09
NPDES Permit No. MA0100480**



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

January 12, 2006

VIA FAX AND EXPRESS MAIL

U.S. Environmental Protection Agency
Attn: Eureka Durr
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Status Report

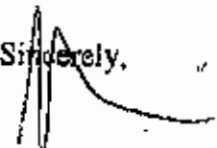
**City of Marlborough Westerly Wastewater Treatment Facility
NPDES Permit No. MA0100480
Appeal Nos. NPDES 05-05 and 05-09**

Dear Ms. Durr:

Enclosed are two (2) originals and five (5) copies of a Status Report on Mediation and Permit Modification Proceedings submitted by EPA-New England Region in the above-referenced NPDES permit appeals.

If you should have any questions, please do not hesitate to contact me at 617-918-1095.

Sincerely,


Samir Bukhari
Attorney Advisor
Office of Regional Counsel
US EPA-Region 1

Enclosure

cc: Donald Anglehart, Esq., City of Marlborough
Kenneth L. Kimmell, Esq., Organization for the Assabet River
Peter Shelley, Esq., John A. Pike, Esq. & John L. Davenport, Esq., CLF
Deirdre Desmond, Esq., DEP
Roger Janson, EPA-Region 1
Carl Dierker, EPA-Region 1
Ann Williams, EPA-Region 1

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN RE

**City of Marlborough Westerly Wastewater
 Treatment Facility
 Permit No. MA0100480**

Appeal Nos. NPDES 05-05 and 05-09

STATUS REPORT ON MEDIATION AND PERMIT MODIFICATION PROCEEDINGS

The United States Environmental Protection Agency, New England Region ("Region") respectfully submits this status report to the Environmental Appeals Board ("Board") with respect to the above-captioned matter.

The Region indicated in its last Status Report, filed December 27, 2005, that it had delayed issuance of a draft permit modification of NPDES Permit No. MA0100480 ("Permit") to the City of Marlborough ("Marlborough") in light of efforts initiated by the Massachusetts Department of Environmental Protection ("DEP") to resolve the dispute through settlement.

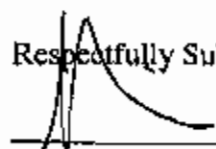
The Region has since learned that Marlborough has entered into preliminary discussions with the Town of Northborough ("Northborough") to redirect Northborough's flow from the Marlborough Westerly Wastewater Treatment Facility ("Westerly Facility") to a suitable groundwater discharge site. The Westerly Facility currently treats sewage from Northborough pursuant to an inter-municipal agreement. Redirecting Northborough's flow to groundwater would free additional flow capacity for Marlborough's use. Marlborough views such flow capacity as a critical factor in accommodating economic growth in the city. An agreement with Northborough along the lines described above would obviate the need for a flow increase in the Permit, the Region's denial of which Marlborough has challenged in its appeal to the EAB. See Marlborough Petition for Review at p.11. Such an agreement would also address concerns recently articulated by the Organization for the Assabet River regarding the

impact of flow increases on the Assabet River, which is already heavily dominated by wastewater effluent under critical low flow conditions.

Officials from Marlborough and Northborough are scheduled to meet on Thursday, January 19, 2006 to discuss the proposal. The Acting Assistant Commissioner of DEP's Bureau of Resource Protection has informed the Region that Marlborough will withdraw its petition for review if Marlborough receives "clear signals" that the flow issue can be resolved through a settlement with Northborough. A flow agreement between the two municipalities has the potential to resolve the outstanding EAB appeals and, consequently, to clear the way for initiation of the planned major upgrade of the Westerly Facility, a predicate to restoration of designated uses in the Assabet River. In consultation with DEP, the Region has, accordingly, decided to await the outcome of the meeting between the two municipalities before proceeding with the partial withdrawal and modification of the permit.

The Region appreciates that the Board's November 22, 2005 Order Staying Proceedings until May 8, 2006 was based on an assumption that the Region would meet certain interim milestones in the permit modification process and would issue the final modification on or around April 1, 2006. The Region reiterates that it will make best efforts to ensure that the modification process is completed as close to the original deadline as possible should the matter not be resolved outside of litigation.

Respectfully Submitted,



U.S. Environmental Protection Agency
New England Region

By its Counsel,
Samir Bukhari
Attorney Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023
(617) 918-1095

Dated: January 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Status Report on Mediation and Permit Modification Proceedings in the matter of City of Marlborough Westerly Wastewater Treatment Facility (Permit No. MA0100480), NPDES Appeal Nos. NPDES 05-05 and 05-09, were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

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

Donald Anglehart, Esq.
Gadsby Hannah LLP
225 Franklin Street
Boston, Massachusetts 02110

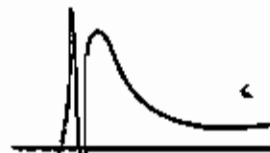
Peter Shelley, Esq., John A. Pike, Esq. &
John L. Davenport, Esq.
Conservation Law Foundation
62 Summer Street
Boston, MA 02110-1016

Deirdre Desmond, Esq.
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

By Facsimile and Federal Express:

U.S. Environmental Protection Agency
Environmental Appeals Board
Attn: Eureka Durr, Clerk of the Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Dated: January 12, 2006



Samir Bukhari, Attorney
EPA - Region 1
Office of Regional Counsel