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ENVIRONMENTAL APPEALS BOARD

September 15, 2008

Via Hand Delivery

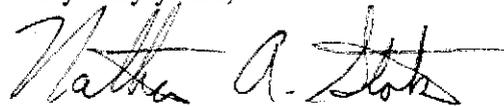
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, DC 20005

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 an Initial Petition for Review and Joint Scheduling Motion from the Upper Blackstone Water Pollution Abatement District with respect to the above-referenced permit.

Very truly yours,



Nathan A. Stokes

NAS

Enclosures

cc: USEPA Region 1
Fredric P. Andes, Esq.
Erika K. Powers, Esq.
Robert D. Cox, Jr., Esq.
Norman E. Bartlett, II, Esq.

RECEIVED
U.S. E.P.A.

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

ENVIRONMENTAL APPEALS BOARD

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

NPDES Appeal No. 08-_____

INITIAL PETITION FOR REVIEW

I. Introduction

The Upper Blackstone Water Pollution Abatement District (the "District") submits this initial petition for review (the "Initial Petition") of certain conditions in the final National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0102369 (the "Permit") issued by the United States Environmental Protection Agency ("EPA"), Region 1 ("Region 1") on August 22, 2008, pursuant to 40 C.F.R. §124.19(a). Filed simultaneously with this Initial Petition is a Joint Scheduling Motion seeking additional time for the District to prepare a more substantive Petition, and for Region 1 to prepare its response.

This Initial Petition is designed to identify for the Environmental Appeals Board ("EAB"), and Region 1, those contested terms and conditions of the Permit concerning which the District seeks review. As outlined below, the new Permit contains numerous terms and provisions based on clearly erroneous conclusions of fact or law that the District specifically identified in its public comments, but which Region 1 failed to rationally address. In addition, the analysis that Region 1 conducted, which provide the foundation for many of the appealed permit provisions, fails to duly consider the data and public comments or to draw rational

conclusions from that data or those comments. Finally, the Initial Petition identifies issues that involve an exercise of discretion or an important policy consideration that the EAB should, in its discretion, address.

II. Background

The District owns and operates its facility located in Millbury, Massachusetts which discharges to the Blackstone River. The District is currently operating under a Permit issued on September 30, 1999, as modified by a settlement agreement dated December 19, 2001 (the "2001 Permit"). In accordance with the settlement agreement, an administrative consent order (the "Consent Order") issued in 2002 with an 8-year compliance schedule, until August, 2009, to complete treatment plant upgrades and meet many of the 2001 Permit limits, including a phosphorus limit of 0.75 mg/L.

On November 8, 2005, the District submitted an updated renewal 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.

The District contests, among other issues, the provisions of the Permit which set or include:

- (1) The total phosphorus limits;
- (2) The total nitrogen limits;
- (3) Year round disinfection requirements;

- (4) “Co-permittees” who were never previously identified as “permittees”; and
- (5) Other terms and provisions described herein.

The Permit’s provisions, which have an effective date of October 1, 2008, conflict with the existing, enforceable compliance schedule established under the settlement agreement Consent Order signed by Region 1 and 2001 Permit. In 2001 Permit and Consent Order called for a discharge limit for phosphorus of 0.75 mg/L in summer, with no limit on total nitrogen. Based upon these standards, the District committed to upgrade its facility at a significant cost of approximately \$180 million. Those upgrades are underway and scheduled for completion in 2009. Without the benefit of bringing the upgraded facility on-line, and thereby allow for any determination of the effectiveness of that upgrade on water quality, the Region has imposed new limits on phosphorus and total nitrogen without sufficient scientific support or adequate decision making, and in contradiction to the settlement agreement and Consent Order.

III. Specific Factual and Legal Issues

The District is contesting the following additional provisions of the Permit:

	Part	Term or Provision Appealed	Subject Matter
1.	Page 1 of 19	Identification of Co-permittees for Part D and E	Co-permittees
2.	Part I. A.1	Fecal coliform limit (November 1 – March 31)	Effluent limits
3.	Part I. A. 1.	Ammonium Nitrogen (year round)	Effluent limits
4.	Part I. A.1	Total nitrogen	Effluent limits
5.	Part I. A.1	Total phosphorus	Effluent limits
6.	Part I. A.1	Total aluminum, lead and nickel limits	Effluent limits
7.	Part I. A. 1	Total copper limits	Effluent limits
8.	Part I. A.1	Whole effluent toxicity	Effluent limits, Monitoring and

			Sampling
9.	Part I. A.1	Effluent limits and monitoring requirements applicable to outfall 001 and 001A (wet weather discharge)	Effluent limits, Monitoring and Sampling
10.	Part I. A.1, Footnote 5	Sampling protocol	Monitoring and Sampling
11.	Part I. A.1, Footnote 6	Fecal coliform sampling parameters	Monitoring and Sampling
12.	Part I. A.1, Footnote 8	Sampling protocol	Monitoring and Sampling
13.	Part I. A. 1, Footnote 9	Cold weather denitrification	Operations, Monitoring and Sampling
14.	Part I. A.1, Footnote 13	Sampling schedule and protocol	Monitoring and Sampling
15.	Part I. A.1, Subsection e.	Dry weather description	Effluent limits
16.	Part I. D. and E.	Permittee and co-permittee requirements	Co-permittees
17.	Part I. E. 3.	Infiltration and Inflow (I/I) Plan	I/I Plan

IV. Grounds For Appeal

The facts and circumstances outlined in its Petition demonstrate that the contested Permit provisions are based on errors of law and/or fact and/or involve an exercise of discretion or an important consideration that the EAB should exercise its power to review.

V. Relief Sought

The District respectfully seeks full review by the EAB of the appealed terms, conditions and limits of the Permit, based upon this Initial Petition and its supplemental Petition for review

Initial Petition for Review
NPDES Permit No. MA0102369

to be submitted in accordance with the Assented Scheduling Motion, if so granted by the EAB.

As part of such review, the District seeks the following relief:

- (1) that the EAB grant the Assented Scheduling Motion;
- (2) that the EAB grant review of the District's Initial and supplemental Petition;
- (3) To the extent stayed by operation 40 C.F.R § 124.16(a) or § 124.60(b) the contested permit conditions and limitations be stayed pending the outcome of this administrative proceeding;
- (4) Stay of appropriate terms and conditions until expiration of the current consent order, inclusive of any extensions granted;
- (5) Any such interim relief as may be appropriate under the circumstances, including orders requiring further development of the administrative record by the Region, and further correction of the technical flaws in the water quality model used to develop the permit limits by the Region; and
- (6) Remand to the Region for further permitting procedures, including, but not limited to:
 1. an order to issue an amended Permit that restores the phosphorus limits to the 2001 Permit levels;
 2. an order requiring it to strike the Permit condition imposing a winter level of 1.0 mg/L Total Phosphorus;
 3. an order requiring it to strike the Permit condition imposing a Total Nitrogen limit of 5 mg/L;
 4. an order requiring it to strike the Permit condition imposing a year round disinfection requirement;

5. an order requiring the Region to remedy any clearly erroneous and/or irrational conclusions of law or fact, and requiring it to consider any data, analyses, and other arguments that the Board determines Region 1 failed to duly consider;
6. and an order on any additional grounds raised in the District's forthcoming supplemental Petition for review.

Respectfully submitted,
UPPER BLACKSTONE WATER
POLLUTION ABATEMENT DISTRICT
By its attorneys,



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Dated: September 15 2008

**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-_____
)	
NPDES Permit No. MA0102369)	
)	

ASSENTED TO SCHEDULING MOTION

Upper Blackstone Water Pollution Abatement District ("District"), with the assent of the United States Environmental Protection Agency, Region 1 ("Region"), respectfully requests that the Environmental Appeals Board ("EAB") modify the schedule for submission of the District's Petition for Review and the Region's response to that Petition as set forth below. The requested modification is necessary and appropriate due to the timing of issuance of the Final NPDES Permit No. MA0102369 by the Region (the "Final Permit") at a time when critical personnel and consultants of the District were unavailable due to previously scheduled personal plans and the fact that numerous persons provided oral and/or written comments on the draft permit. Accepting this motion will insure that the District will be able to thoroughly review the Region's responses to the District's and other parties' comments, and to present its arguments to the EAB in a manner that is as clear and concise as possible. As further grounds for this assented motion, the movant states:

1. The District owns and operates its facilities located in Millbury, Massachusetts which discharges to the Blackstone River. The District is currently operating under the permit issued in 2001.
2. On November 8, 2005 the District submitted a renewal application to the Region.
3. On March 23, 2007, the Region issued a draft NPDES permit.
4. The District and many others submitted comments on the draft NPDES permit during the public comment period, which ended on May 25, 2007.
5. On August 22, 2008, the Region issued the Final NPDES Permit No. MA0102369 along with a Response to Comments document consisting of approximately 122 single-spaced pages, in addition to numerous other reports and documents in the administrative record.
6. Concurrently with the filing of this Motion, the District is filing a Notice of Petition for Review of the Final Permit ("Notice Petition"). The Notice Petition does not present a full narrative of the District's arguments, but does provide the EAB and the Region with a comprehensive list of those limits and conditions for which the District is seeking review by the EAB.
7. Providing full and appropriate basis for the District's Petition requires additional time. Because of the timing of issuance of the Final Permit, when key personnel necessary to review and respond were unavailable, and because of the numerous comments submitted by many parties, the District seeks leave to supplement its Notice Petition described above and filed with the Motion.

8. The Region, through counsel, has advised the District that it does not object to the District's motion provided: 1) the Board sets forth a briefing schedule that allows the Region with a commensurate two-week extension in which to file its response to the petition and 2) the initial petition accompanying this motion is a concise itemization of the limits and conditions for which the District is seeking review.

9. Allowing the requested modification of the petition schedule benefits the EAB because it will insure the procedural and substantive issues associated with this petition are articulated as clearly and concisely as possible. Further, the requested modification will not prejudice any other party because, if requested and appropriate, a similar modification to the schedule may be made for any other petitions. In the event of other petitions, appropriate motions may also be made to the Board to consolidate and to provide for a single date for the Region's response to all petitions in order to facilitate orderly disposition of this matter.

WHEREFORE, the District respectfully requests that the EAB modify the schedule for the petition process as follows:

- a. On or before October 8, 2008, the District will submit a supplement to its Notice Petition;
- b. On or before December 5, 2008, the Region will submit its Response to the District's petition for Review.

The District, in an abundance of caution, and in the event the EAB does not grant this assented Motion, reserves the right to submit a complete Petition for Review to the EAB

inclusive of all arguments, attachments, and exhibits in advance of the thirty-day deadline for submission of a petition to the EAB which expires on September 24, 2008.

The Region, through its counsel, has informed the Petitioner that it assents to this Scheduling Motion.

Respectfully submitted,
UPPER BLACKSTONE WATER
POLLUTION ABATEMENT DISTRICT
By its attorneys,



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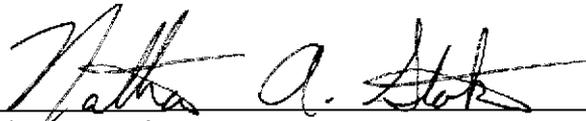
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Dated September 15, 2008

CERTIFICATE OF SERVICE

I, Nathan A. Stokes hereby certify that I have served a copy of the foregoing Initial Petition for Review and Joint Scheduling Motion on the following by mailing same, postage prepaid, this 15th day of September 2008, to:

Karen A. McGuire, Esq.
US EPA - Region 1
1 Congress Street, Suite 1100
Mail Code CDW
Boston, MA 02114-2023



Nathan A. Stokes

Dated: September 15, 2008