



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

U.S. EPA

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January 12, 2006

**VIA FAX AND EXPRESS MAIL**

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

**Re: Status Report**

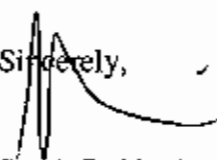
**City of Marlborough Westerly Wastewater Treatment Facility**  
**NPDES Permit No. MA0100480**  
**Appeal Nos. NPDES 05-05 and 05-09**

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	)	Appeal Nos. NPDES 05-05 and 05-09
Treatment Facility	)	
Permit No. MA0100480	)	
	)	
	)	
	)	

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**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.

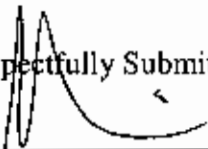
The Region has since learned that Marlborough has entered into preliminary discussions with the Town of Northborough ("Northborough") to redirect Northborough's flow from the Marlborough Westerly Wastewater Treatment Facility ("Westerly Facility") to a suitable groundwater discharge site. The Westerly 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,



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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

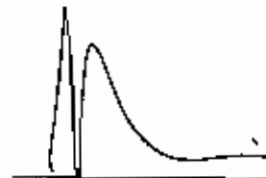
Peter Shelley, Esq., John A. Pike, Esq. &  
John L. Davenport, Esq.  
Conservation Law Foundation  
62 Summer Street  
Boston, MA 02110-1016

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

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