

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

In re:

UPPER BLACKSTONE WATER
POLLUTION ABATEMENT DISTRICT,
MILLBURY, MASSACHUSETTS

NPDES Permit No. MA0102369

NPDES Appeal Nos. 09-06

**MOTION OF THE PERMITTEE
FOR LEAVE TO REPLY TO
REGION 1'S MEMORANDUM IN OPPOSITION TO PETITION FOR REVIEW**

Upper Blackstone Water Pollution Abatement District (the "Permittee" or "District"), requests leave to submit to the Environmental Appeals Board (the "Board") a reply to Region 1's Memorandum in Opposition to Petition for Review ("Opposition") of the NPDES Permit Modification issued to the Permittee imposing a numeric aluminum effluent limitation and associated monitoring requirements. A proposed brief reply is provided with this motion. A brief reply will facilitate the Board's deliberation in the following respects:

1. Permittee should be allowed to respond to the numerous errors the Region acknowledges making for the first time in its Opposition that directly impact calculations and documents in its Statement of Basis and Response to Comments for imposing this numeric aluminum effluent limitation and associated monitoring requirements and to refute Region's claim that all these errors are "harmless". These errors are indicative of the slipshod nature of the permitting process the District has petitioned the Board to

review in this petition and in NPDES Appeal No. 08-11 and warrant a response to clarify the record before the Board.

2. The Region acknowledges for the first time in its Opposition errors in its Response to Comments as to certain data it did and did not rely upon in setting an aluminum effluent limit of 87 ug/l in the Permit Modification. Opposition, pp. 13-15 and n. 5. While the Region contends these were harmless errors, the Region's Opposition provides new, and different calculations based upon its claimed corrected errors to support its position that the effluent limit is appropriate and its errors harmless. Specifically, at Ex. 6, Table 1, the Region provides five different scenarios for average effluent aluminum values in response to its errors and toward justifying its outcome and supporting the argument that its errors were harmless. The Permittee should be given the opportunity to respond to the Region's new analysis and position as to harmless error.
3. The Region claims incorrectly that the Permittee did not properly preserve for review by the Board specific points regarding the need for the Region to use valid, relevant, representative data in setting the aluminum effluent limitation, and the Permittee should be afforded the opportunity to respond to these assertions. Specifically, the Region's use of outlier data, combined with the improper use of values reported below laboratory detection limits, and data showing naturally occurring and ambient levels of aluminum upstream were indeed raised by the Permittee in its comments which the Region chose to ignore before issuing the Permit Modification. The Permittee should be given the opportunity by way of a reply to explain to the Board precisely the manner in which those issues were raised, but ignored by the Region till its Opposition.

4. While the Region suggests in its Opposition that there are many anthropogenic sources of aluminum upstream of the District's discharge, the material issue is whether naturally occurring aluminum exceeds the numeric criteria. Further, even absent human induced acid rain the drainage from these areas is naturally acidic. The District provided ample information on these issues for the Region to consider during the comment period including a number of papers and studies which the Region chose to ignore. The District should be afforded the opportunity to explain more fully in a reply the Region's misplaced assertions.
5. A brief reply will also allow the Permittee to correct misstatements of fact and law by Region 1. It will also allow the Permittee to address mischaracterizations of the arguments presented in its Petition for Review.

This motion is timely, in that the Permittee first received the Region's Opposition on July 14, 2009. The Permittee's request for leave to reply is not merely an automatic response, but rather one reflecting the significance of the Region's errors as acknowledged in its Opposition, as well as mischaracterizations, misstatements and new issues incorporated in the Region's Opposition.

The Permittee believes that a short reply would assist the Board as it will hone in on the key issues in contention in this appeal. The District's proposed reply is submitted with this motion. Should the Board issue an order allowing a reply, the District requests the Board consider the District's proposed reply in its review of this matter.

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



BOWDITCH & DEWEY, LLP
Robert D. Cox, Jr., Esquire
Norman E. Bartlett, II, Esquire
311 Main Street
P.O. Box 15156
Worcester, MA 01615-0156
(508) 926-3409
(508) 929-3012 Fax

BARNES & THORNBURG LLP
Fredric P. Andes, Esq.
Erika K. Powers, Esq.
Suite 4400
One N. Wacker Drive
Chicago, Illinois 60606-2809
(312) 214-8310
(312) 759-5646 Fax

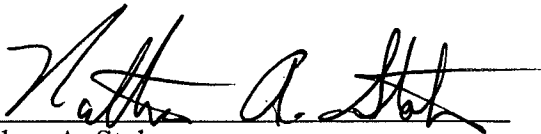
BARNES & THORNBURG LLP
Nathan A. Stokes, Esq.
750 17th St. NW, Suite 900
Washington, DC 20006-4675
(202) 371-6376
(202) 289-1330 Fax

July 24, 2009

CERTIFICATE OF SERVICE

I, Nathan A. Stokes, hereby certify that I have served a copy of the foregoing on the following by mailing same, postage prepaid, this 24th day of July 2009, to:

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



Nathan A. Stokes

Dated: July 24, 2009