

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

In re:)	
)	
UPPER BLACKSTONE WATER)	NPDES Appeal Nos. 08-11 to 08-18 &
POLLUTION ABATEMENT DISTRICT,)	09-06
MILLBURY, MASSACHUSETTS)	
)	
NPDES Permit No. MA0102369)	
)	

**MOTION TO CONTINUE ORAL ARGUMENT DATE AND FOR LIMITED
SUPPLEMENTAL BRIEFING ON RECENT CASE LAW**

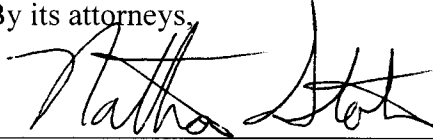
By order of the U.S. Environmental Appeals Board (“EAB” or “Board”), the Upper Blackstone Water Pollution Abatement District (the “Permittee” or “District”), other Petitioners and Intervenors, and the U.S. Environmental Protection Agency Region 1 (“Region”) (collectively the “Parties”) were scheduled to present oral argument on September 16, 2009 in the above-captioned National Pollutant Discharge Elimination System (“NPDES”) Permit appeals (“UB Appeals”). On September 9, 2009 the EAB rescheduled the oral argument in the UB Appeals to September 30, 2009 primarily to afford the Parties an opportunity to review a then imminent decision in a relatively similar appeal before the Board -- *In re: City of Attleboro, MA Wastewater Treatment Plant*, NPDES Appeal Nos. 08-09 and 08-09. On September 15, 2009, the Board issued a 93-page decision in the Attleboro appeal (“Attleboro Decision”), which addresses some—but not all—of the issues raised in the UB Appeals. *In re: City of Attleboro, MA Wastewater Treatment Plant*, 14 E.A.D. __ (EAB 2009). For the reasons set out herein, the Permittee respectfully requests a 30-day continuance of the scheduled oral argument in the UB Appeals, to include 15-days leave to file maximum 10-page supplemental briefs concerning the

effect of the Attleboro Decision on the questions presented in the UB Appeals. All Parties that filed an appearance for the scheduled oral argument assent to this Motion, except as follows: Conservation Law Foundation - declined; Region - declined.

As the Board anticipated, some of the issues addressed by the Board in the Attleboro Decision are relevant to issues raised in the UB Appeals. Due to the length of the Attleboro Decision and the complex nature of the issues raised in both appeals, however, additional time is necessary to analyze and present to the Board the impact the Attleboro Decision should have on its decision in the UB Appeals. The Attleboro Decision could have a significant effect on the parties' arguments. As a result, the parties should be granted sufficient opportunity to refine their positions in light of this new authority and, before oral argument occurs, to present to the Board a clear picture of the issues to address. Further, providing additional time for the parties to consider the Attleboro Decision and provide the Board with supplemental briefing will serve the interests of judicial economy by narrowing the issues that remain, and by allowing the parties and the Board to focus oral argument on only those issues.

For these reasons, the Board should grant the Permittee's Motion, continue the current oral argument date, and order supplemental briefing from the Parties.

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

Dated: September 18, 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 18th day of September 2009, to:

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

John Davenport
Conservation Law Foundation
62 Summer Street
Boston, MA 02110-1016

J. Bradford Lange
Sewer Commission
Town of Millbury, Massachusetts
Municipal Office Building
127 Elm Street
Millbury, MA 01527

Karen L. Crocker
MA Dept. of Environmental Services
Office of General Counsel
One Winter Street
Boston, MA 02108

Christopher M. Kilian
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602

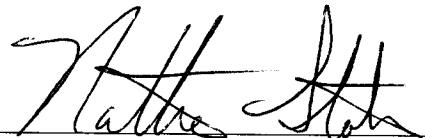
James Shuris
Director of Public Works
Town of Holden, Massachusetts
Holden, MA 01520

Donald G. Manseau
Cherry Valley Sewer District
P.O. Box 476
Leicester, MA 01524

Susan B. Forcier
Dept. of Environmental Management
Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908-5767

David Mears
Environmental and Natural
Resources Law Clinic
Vermont Law School
P.O. Box 96, Chelsea Street
South Royalton, VT 05068

Northern RI Chapter 737 Trout
Unlimited
c/o Roland C. Gauvin
2208 Mendon Road
Cumberland, RI 02864


Nathan A. Stokes

Dated: September 18, 2009