# EXHIBIT 5

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

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| In re: | ) | |
| | ) | |
| UPPER BLACKSTONE WATER POLLUTION ABATEMENT DISTRICT, MILLBURY, MASSACHUSETTS | ) | NPDES Appeal No. 08-11 |
| | ) | |
| | ) | |
| NPDES Permit No. MA0102369 | ) | |
| | ) | |

**UPPER BLACKSTONE WATER POLLUTION ABATEMENT DISTRICT'S**
**SUPPLEMENTAL PETITION FOR REVIEW**


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**11. Infiltration/Inflow Control Plan**

Region 1 has failed to adequately address the comments made by the District with regard to the length of time needed to complete an Infiltration/Inflow Control Plan. Expecting that it can be completed in six months is unreasonable. The Region's failure to acknowledge the local conditions and instead imposing this stringent deadline constitutes an abuse of discretion. Member communities must include money for such studies in their annual budget requests, as contingent funds are scarce in these austere times. Budget approval must occur at annual town meetings typically held in the spring, in many cases, more than six months from the original effective date of the Permit. Once such projects are budgeted and funded, state purchasing requirements are such that getting a consultant on board to help develop the plan would take the better part of six months. The more parties involved, the more complex it becomes. The District appreciates that the Region believes that an adequate plan can be developed within this timeframe; the District, however, remains unconvinced and believes substantially more time should be given for the completion of the plan, or at a minimum, the timeframe should be tied to a different benchmark date, such as the signing of the contract to develop this plan. To not give the District adequate time to complete this task is an abuse of the Region's discretion.

## I. The Board Should Grant Review Because This Matter Involves Important Policy Considerations.

For the following reasons, the Board should grant review because this matter involves important policy considerations. 40 C.F.R. § 124.19(a).

First, the facts outlined in this Petition and in Region 1's Response to Comments establish that Region 1 that insisted upon the issuance of the contested permit provisions instead

of the permitting process with all of EPA and warrants review by the Board and whatever redress it deems appropriate.

**2. Co-Permittees**

Region 1 has improperly expanded the scope of the Permit to include as "Co-permittees" municipalities that own and operate wastewater collection systems which convey wastewater to the District's system and plant for treatment. Furthermore, Region 1 has sought to create a class of "co-permittees" upon which obligations are imposed without those co-permittees ever making application for or signing the Permit. While Region 1 did revise the co-permittee provision of the final permit in an apparent effort to respond to the District's comments and concerns that Region 1 was impermissibly making the District responsible for operation and maintenance of these local collection systems, the revised provision remains unclear and inappropriate. For example, Region 1's effort to shift to co-permittees certain operation and maintenance obligations is incomplete because it obligates the District to undertake reporting activities associated with wastewater collection systems over which the District has no control. This provision of the final permit still imposes an improper burden on the District and risk of EPA enforcement against the District for the actions or inactions of these municipalities under Part I. D. and E. which the District is prohibited from managing and are more appropriately addressed in separate permits with each municipality.

Region 1 looks to the District's enabling legislation, Chapter 752 of the Acts of 1968. (Appended as Exhibit J.), for authority to impose this obligation, and specifically I/I control. *See* RTC, R#F45, p. 87. Region 1 improperly relies upon Section 7, which addresses industrial

discharges only, and ignores Section 16 which specifically limits the District's authority over its member communities' satellite systems. Section 16 provides:

> nothing [in the District's enabling authority] shall be interpreted to authorize the board to construct, *operate or maintain the local sewage system* of each member, city, town or sewage district." (Emphasis added).

Further, according to Region 1,

> that [District] and its member communities have decided to maintain separate ownership of the treatment plant and collection system does not require the EPA to solicit separate signatures from each of the satellite systems. Nor does it require the EPA to issue separate permits to [the District] the satellite systems.

RTC, R#F45, p. 86.

It is precisely for this reason – separate ownership and control of the collection system and the treatment of collected waste – that the EPA must issue separate permits to the District and the "co-permittees." Issuing a single permit puts the District in conflict with its enabling statute issued by the Great and General Court of the Commonwealth of Massachusetts and at risk of being the target of enforcement by Region 1 for matters it is legally prohibited from controlling by state law. The enforcement mechanisms of this provision remain unclear in the final permit, and as a result the District is unfairly and inappropriately at risk of developing a negative enforcement and compliance history with the EPA for potential actions between EPA and the municipal co-permittees which would be lodged on the record of the District's NPDES permit.

As to the listed "co-permittees," Region 1 does not adequately consider or respond to the District's comments regarding the affected municipalities' participation in the Permit process. The Region contends that co-permittees need not apply for or sign any permit application or,

apparently, take any affirmative step in order for Permit conditions to be binding upon those communities. However, the regulations implementing the NPDES permit application process belie this interpretation. In describing who must sign applications for a permit, 40 C.F.R. § 122.22 (a)(3) notes that all permit applications must be signed, "*For a municipality, State, Federal, or other public agency.* By either a principal executive officer or ranking elected official." The application for this permit was not signed by either a principal executive officer nor a ranking elected official for any of the seven other public entities which the Region seeks to bind by this final permit. Moreover, the director of the District cannot be said to be an authorized representative of these public entities, even if the regulations were to allow permit applications to be signed by authorized representatives. "Authorized representative" is defined in the subsequent section of the regulations, which requires that reports or other information submitted to EPA in connection with a permit be signed by one of the parties described in (a) or an authorized representative:

> A person is a duly authorized representative only if: (1) The authorization is made in writing by a person described in paragraph (a) of this section; (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and, (3) The written authorization is submitted to the Director.

40 C.F.R. § 122.22(b)

The Director of UBWPAD in this case received no authorization in writing to represent any of the "co-permittees," nor was such written authorization submitted with the application.

The application was submitted solely on behalf of the District, was only signed by the District and cannot now be imposed upon entities which were not party to the application.

The Region apparently relied upon information in the District's application identifying "municipalities served," but chose to ignore the separate municipal and state entities which have legal control over the collection systems in those municipalities and the various contractual relationships between them. Instead of seeking to identify and then permit each owner of the satellite systems, Region 1 contends that it has legal authority to bind each system under the Permit because it purportedly gave notice of these new obligations by providing each municipal "co-permittee" with a copy of the Fact Sheet and draft permit in advance of the final permit. RTC, R#F45, p. 87. Certainly, having not signed a permit application, the named "co-permittees" were not on notice of or informed of Region 1's plan to impose new obligations on them under this Permit. The District notes that the owners of some wastewater collection systems were ignored (e.g., Massachusetts Department of Conservation and Recreation), and others, while recognized, were inexplicably deemed too small to be included as co-permittees (e.g., Sutton, Shrewsbury, Oxford and Paxton). Such arbitrary permitting action is not fully addressed by the Region's Response to Comments. Consequently, the District requests that the Board order Region 1 to remove the co-permittee provisions of the final permit.

### 3. The Final Permit Raises Significant Interstate/Trans-Boundary Considerations

The Board should review the Permit issued by the Region because the contested provisions of the Permit involve important, precedent-setting policy considerations with regard to interstate water quality management. The Region has erroneously interpreted the CWA to

# EXHIBIT 6

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Commissioner

**Bureau of Resource Protection**
# INTERIM INFILTRATION AND INFLOW POLICY

Effective Date: September 6, 2001 Policy No.: BRP01-1

Program Applicability: Municipalities owning sewage collection and treatment systems who apply for new or renewed surface water discharge permits, prepare Comprehensive Wastewater Management Plans, or request state wastewater project funding through the State Revolving Fund, as well as DEP staff who review such documents.

Approved by: [signed]
Glenn Haas, Acting Assistant Commissioner
for Resource Protection

## Introduction

Infiltration and inflow (I/I) are groundwater, rainwater and snow melt that enter sewer systems through a variety of defects or illegal connections. Extraneous water from infiltration/inflow sources reduces the capacity and capability of sewer systems and treatment facilities to transport and treat domestic and industrial wastewaters. During periods of high groundwater and large or sudden storm events, I/I entering the system may cause sewer surcharging, wastewater backups into homes, businesses or factories, localized overflows of untreated sewage and inadequate treatment at treatment facilities, all which increase the cost of operating the collection and treatment systems and adversely impact public health, welfare and the environment.

Infiltration occurs when existing sewer lines undergo material and joint degradation and deterioration as well as when sewer lines are poorly designed and/or constructed. Inflow normally occurs when rainfall enters the sewer system through direct connections such as roof leaders, yard drains, catch basins, sump pumps, manhole covers and frame seals or indirect connections with storm sewers. The control of infiltration/inflow by sewer system rehabilitation and an on-going operations and maintenance program to identify these areas is essential to protect the enormous investment in sewers and wastewater treatment facilities made by cities,

towns and the Commonwealth as well as for the protection of the public health and the environment.

The Department, through its permitting and regulatory authority, has responsibility for ensuring compliance with the requirements of the Massachusetts Clean Waters Act (G.L.c. 21, §§26-53) and the regulations adopted under 314 CMR 1.00 through 9.00. Historically, the Surface Water Discharge Permit Program (314 CMR 3.00) has been used as a vehicle to require permitted owners of collection and treatment systems to routinely monitor and evaluate their systems relative to the effects of I/I and have a plan in place to provide routine maintenance and respond to emergency situations.

**Purpose** – The intent of this interim policy is to establish clear surface water discharge permit conditions necessary for permitted municipalities to manage I/I in a comprehensive and consistent manner until the Department develops a comprehensive sewer system O&M guidance. Consistent analyses among municipalities will also assist the DEP and EPA in evaluating facility performance and Operation & Maintenance in the permit renewal (NPDES), Comprehensive Wastewater Management Planning (CWMP) and financial assistance (SRF) processes.

This interim policy was developed with the cooperation of the United States Environmental Protection Agency, New England Region – 1 and is consistent with the Federal Inflow/ Infiltration Regulations and Guidelines pursuant to section 201 of the Clean Water Act (40 CFR 35.2120).

For specific details related to satisfying each of the standard permit conditions, parties affected by this policy are referred to the Department's "Guidelines For Performing Infiltration/Inflow Analyses and Sewer System Evaluation Survey" (DEP 1993 revised).

## STANDARD NPDES PERMIT CONDITONS RELATED TO INFILTRATION/INFLOW FOR MUNICPAL POTW'S

Infiltration/Inflow Control Plan:

The permittee shall develop and implement a plan to control infiltration and inflow (I/I) to the separate sewer system. The plan shall be submitted to EPA and MA DEP within six months of the effective date of this permit (see page 1 of this permit for the effective date) and shall describe the permittees program for preventing infiltration/inflow related effluent limit violations, and all unauthorized discharges of wastewater, including overflows and by-passes due to excessive infiltration/inflow.

The plan shall include:

- An ongoing program to identify and remove sources of infiltration and inflow. The program shall include the necessary funding level and the source(s) of funding.

- An inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts. Priority should be given to removal of public and private inflow sources that are upstream from, and potentially contribute to, known areas of sewer system backups and/or overflows

- Identification and prioritization of areas that will provide increased aquifer recharge as the result of reduction/elimination of infiltration and inflow to the system.

- An educational public outreach program for all aspects of I/I control, particularly private inflow.

((FOR REGIONAL FACILITIES ONLY)) The permittee shall require, through appropriate agreements, that all member communities develop and implement infiltration and inflow control plans sufficient to ensure that high flows do not cause or contribute to a violation of the permittees effluent limitations, or cause overflows from the permittees collection system.

Reporting Requirements:

A summary report of all actions taken to minimize I/I during the previous calendar year shall be submitted to EPA and the MA DEP annually, by the anniversary date of the effective date of this permit. The summary report shall, at a minimum, include:

- A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous year.

- Expenditures for any infiltration/inflow related maintenance activities and corrective actions taken during the previous year

- A map with areas identified for I/I-related investigation/action in the coming year.

- A calculation of the annual average I/I, the maximum month I/I for the reporting year.

A report of any infiltration/inflow related corrective actions taken as a result of unauthorized discharges reported pursuant to 314 CMR 3.19(20) and reported pursuant to the Unauthorized Discharges section of this permit.

# EXHIBIT 7

**FW: EAB Decision Regarding UBWPAD NPDES Appeal**

**Angelo Liberti** to: David Pincumbe 06/15/2010 02:48 PM

History: This message has been forwarded.

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**From:** Angelo Liberti
**Sent:** Tuesday, June 15, 2010 2:46 PM
**To:** 'houlihan.damien@epa.gov'
**Cc:** Susan Forcier; Alicia Good
**Subject:** EAB Decision Regarding UBWPAD NPDES Appeal

Hi Damien,

I have reviewed the May 28, 2010 Environmental Appeals Board decision regarding the Upper Blackstone Water Pollution Abatement District (UBWPAD) NPDES permit appeal. As you know, the EAB has denied review of all issues raised in the appeal proceedings with the exception of remanding the fact that satellite communities were included as co-permittees to EPA for further consideration .

Rhode Island waters continue to suffer significant water

quality impairments due to excessive inputs of nitrogen (Seekonk River, Providence River and Upper Narragansett Bay) and phosphorus (Blackstone River and Scotts Pond). Rhode Island WWTFs have been issued RIPDES permits and have either completed construction or are under enforceable schedules to complete the construction of the modifications to reduce nitrogen and phosphorus. UBWPAD has been shown to be a significant contributor to impairments documented in Rhode Island waters, and I'm writing to request that EPA proceed as expeditiously as possible to place into effect and require that UBWPAD comply with all requirements of their NPDES permit.

Thank you for your attention to this matter.

Angelo

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