CHERRY VALLEY SEWER DISTRICT

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U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341G StreetN, W, Suite6 00
Washington, DC 20005

Dear Persons;

Pursuant to 40 CFR § 124.19 we hereby submit this Petition for Review of conditions included in National Pollutant Discharge Elimination System permit No. MA0102369 issued on August 22, 2008 by United States Environmental Protection Agency Region I to the Upper Blackstone Water Pollution Abatement.

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 remain 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 725 of the Act of 1968.), for authority to impose this obligation, and specifically I/I control. 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." Response to Comment #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. 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. Response to Comment #F45 P. 87. The record, however, does not show that the proper municipal or state entities with ownership or controlling interest in the facilities were indeed given notice. 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. We note that the owners of some wastewater collection systems were ignored (e.g., Massachusetts Department of Conservation and Recreation or DCR), 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, we request that the Board Order Region 1 to remove the co-permittee provisions of the Final Permit.

Cherry Valley Sewer District
Member of
Upper Blackstone WPAD

Donald G. Manseau, Chairman