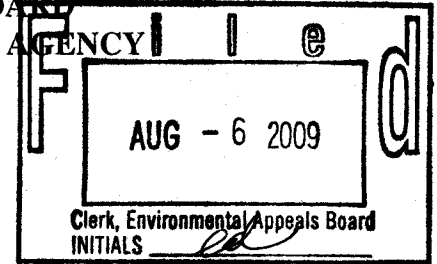


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_) )  
In re: ) )  
 ) )  
Upper Blackstone Water Pollution ) )  
Abatement District ) )  
 ) )  
NPDES Permit No. MA 0102369 ) )  
\_\_\_\_\_) )

NPDES Appeal Nos. 08-11 to 08-18 &  
09-06

**ORDER SCHEDULING ORAL ARGUMENT**

On August 22, 2008, U.S. Environmental Protection Agency Region 1 (the "Region") issued to Upper Blackstone Water Pollution Abatement District (the "District") a National Pollution Discharge Elimination System ("NPDES") permit number MA0102369 (the "Permit"). The District owns and operates a wastewater treatment facility in Millbury, Massachusetts. The Permit would authorize, subject to the Permit's conditions, the District's discharges of effluent from its wastewater treatment facility into the Blackstone River. In September, 2008, the following organizations filed petitions requesting that the Environmental Appeals Board review the Permit's conditions: 1) the District; 2) the Town of Holden, Massachusetts ("Holden"); 3) the Town of Millbury, Massachusetts ("Millbury"); 4) the City of Worcester, Massachusetts ("Worcester"); 5) the Northern RI Chapter 737 Trout Unlimited ("Trout Unlimited"); 6) the Conservation Law Foundation ("CLF"); 7) the Massachusetts Department of Environmental Protection ("MassDEP"); and 8) Cherry Valley Sewer District ("Cherry Valley"). Briefing in response to these petitions and subsequent reply and sur-reply briefs were submitted through

March 2009. The Rhode Island Department of Environmental Management ("RIDEM") also requested and the Board granted permission to participate in this proceeding as Amicus Curiae.

In addition, in response to Trout Unlimited's petition, the Region issued a Permit modification on April 15, 2009, concerning the Permit's conditions for total aluminum discharge and monitoring. On May 20, 2009, the District filed a petition seeking review of that Permit modification. Briefing in response to the District's petition is on-going, with the District's motion to submit a reply brief currently pending before the Board, as well as the Region's request to submit a sur-reply. Also pending before the Board is the District's motion to consolidate its petition for review of the Permit modification with its petition for review of the Permit. Upon consideration, the Board hereby grants consolidation of these proceedings for administrative purposes. In addition, the Board also hereby grants the District's motion to submit a reply memorandum that is substantially the same as the proposed reply the District attached to its motion. Because the District did not sign the proposed reply memorandum that it attached to its motion, the District shall file on or before Tuesday, August 11, 2009, its signed reply memorandum. The Board also hereby grants the Region an opportunity to file a sur-reply of no more than 10 pages, limited to the issues raised in the District's reply memorandum, on or before Friday, August 21, 2009.

Upon consideration of the petitions, responses and other briefs, the Board has decided that oral argument will be of assistance in its deliberations. Accordingly, the parties are ordered, and RIDEM is invited, to participate in oral argument beginning at 10:00 a.m. on Wednesday, September 16, 2009, in the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C. Oral

argument shall be divided as follows (with the parties and Amicus presenting argument in the following order):<sup>1</sup> (1) fifteen minutes for CLF; (2) thirty minutes for the District, (3) five minutes for MassDEP; (4) ten minutes in total for Holden, Worcester, Millbury, and Cherry Valley, collectively;<sup>2</sup> (5) five minutes for RIDEM; and (6) fifty minutes for the Region. At the outset of the proceedings, the District and CLF may each reserve up to five minutes of their allocated time for rebuttal.

The parties and Amicus Curiae participating in oral argument shall focus their arguments on issues pertaining to the Permit's conditions for phosphorus, nitrogen, and total aluminum and the addition of "co-permittees" to the Permit. The parties<sup>3</sup> and Amicus should specifically address the regulations prohibiting the Region from issuing a permit "[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States," 40 C.F.R. § 122.4(d), and requiring that permits include conditions in addition to or more stringent than promulgated effluent limitations "necessary to \* \* \* (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality," bearing in mind, among other things, that such "Limitations must control all

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<sup>1</sup> The Board has not allocated time for Trout Unlimited to present argument as its petition appears to have been rendered moot by the Permit modification.

<sup>2</sup> Holden, Worcester, Millbury, and Cherry Valley have all sought review of the Permit with respect to the Region's decision to include "co-permittees" in the Permit. The Board encourages Holden, Worcester, Millbury and Cherry Valley to confer and assign a single attorney to represent them at oral argument.

<sup>3</sup> We reiterate that any party seeking review of the Permit's conditions shall be prepared to explain how that party's petition sustains its burden of "showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. § 124.19(a).

pollutants or pollutant parameters \* \* \* which the [permit issuer] determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” *Id.* § 122.44(d)(1)(i).

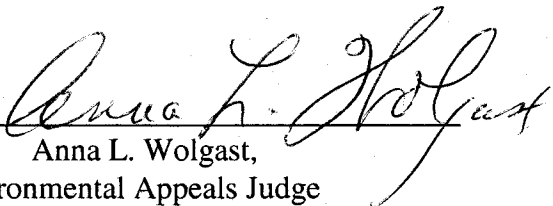
The parties and Amicus shall notify the Clerk of the Board in writing by Tuesday, September 8, 2009, of the names of counsel who will present argument. Counsel for the parties are advised that the Administrative Courtroom is equipped with state-of-the-art video-conferencing equipment and, accordingly, any party or Amicus may participate in the oral argument by video conference, rather than attending in person. Counsel who wish to participate in this oral argument via video-conferencing shall contact the Clerk of the Board, at 202-233-0122, no later than Tuesday, September 1, 2009, to make arrangements for use of the video-conference equipment.

The Board encourages the parties to consider settlement of this matter. In that regard, the Board is prepared, upon request of the parties, to assist in facilitating mediation to aid settlement should the parties determine that such assistance would be beneficial.

So ordered.

Dated: August 6, 2009

ENVIRONMENTAL APPEALS BOARD

By:   
Anna L. Wolgast,  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Scheduling Oral Argument in the matter of Upper Blackstone Water Pollution Abatement District, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, were sent to the following persons in the manner indicated:

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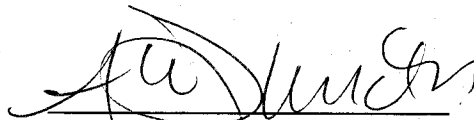
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Dated: AUG -7 2009



Annette Duncan  
Secretary