

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

In the Matter of:)
)

Upper Blackstone Water)
Pollution Abatement District)

NPDES Permit No. MA 0102369)
)
_____)

NPDES Appeal Nos. 08-11
through 08-18, & 09-06

**REGION 1'S OPPOSITION TO UPPER BLACKSTONE WATER
POLLUTION ABATEMENT DISTRICT'S MOTION TO CONTINUE
THE ORAL ARGUMENT DATE AND FOR SUPPLEMENTAL BRIEFING**

Region 1 objects to the Motion of the Upper Blackstone Water Pollution Abatement District to Continue the Oral Argument Date for an additional 30 days in order to enable supplemental briefing related to *In re: City of Attleboro, MA, Wastewater Treatment Plant*, NPDES Appeal No. 08-08. In light of the voluminous pleadings already filed before the Board, supplemental briefing is unlikely to narrow issues or to facilitate orderly and expeditious disposition of this matter. Further, through its postponement of the argument from September 16th to September 30th, the Board has already ensured that the parties have had sufficient time to review the Attleboro decision in advance of the argument date. There is no call for a further postponement of the hearing in order for the parties to file written briefs. Should the Board determine that additional briefing on discrete issues related to *Attleboro* would be useful to its deliberations in this case, the Board can always make such a request of the parties following oral argument.

The District's request is not crafted to narrow issues on appeal. To the contrary, the District suggests the supplemental briefing will allow it to "refine" its positions. *See District's Motion* at 2. That time is long past. *See In re Arecibo & Aguadilla Reg'l Wastewater Treatment Plants*, 12 E.A.D. 97, 123 n.52 (EAB 2005) (noting that all claims and supporting arguments must be raised in the petition). Further, the District's request apparently contemplates that the parties will simultaneously file briefs regarding the Attleboro case. *See District's Motion* at 1 (requesting that all parties submit their filings within 15 days). It is hard to imagine that simultaneous filings on unspecified issues in the Attleboro decision would narrow the issues in the instant appeals or aid in their orderly disposition. Indeed, were the District's goal truly "to narrow[] the issues that remain," (*District's Motion* at 2), it presumably would have offered to identify those arguments it was no longer pursuing in light of the Board's ruling in Attleboro.

The District also suggests that additional time is needed to enable the parties to analyze the Attleboro decision. *Id.* at 1. The Board has already afforded the parties a two-week extension in order to review the decision. Further, the District is ably represented by counsel, as well as the same engineering firm (Camp, Dresser and McKee) that advised the City of Attleboro in that matter. The District is no stranger to the issues in Attleboro and is free to raise any relevant points related to the decision at oral argument.

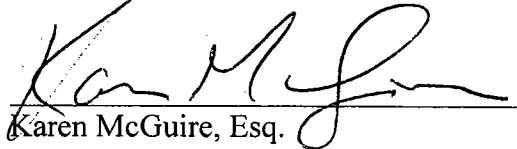
Finally, the District's request for an extension and additional briefing should be evaluated against the need to bring this matter to closure in a relatively expeditious fashion in light of the ongoing and undisputed impairments to the receiving waters. The Board has been charitable in allowing requests from all parties for extensions and

supplemental briefing, including filing of supplemental petitions, reply briefs and sur-reply briefs. The District has failed to present sufficient reason or need for further written filings at this time.

For the foregoing reasons, the Region respectfully requests that the Board deny the District's request to postpone the hearing and to allow supplemental briefing. As noted above, the Board may request additional briefing following oral argument should it determine such filings necessary.

Dated: September 21, 2009

Respectfully submitted by EPA-Region 1,



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