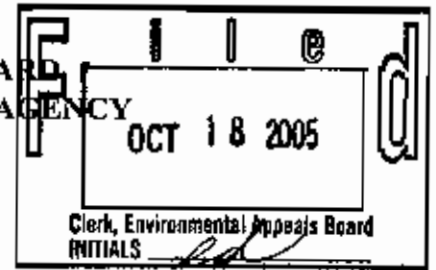


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)

City of Marlborough Westerly)
Wastewater Treatment Facility)
)

NPDES Permit No. MA0100480)
_____)

NPDES Appeal Nos. 05-05 & 05-09

In re:)
)

Town of Maynard Water Pollution)
Control Facility)
)

NPDES Permit No. MA0101001)
_____)

NPDES Appeal Nos. 05-06 & 05-12

In re:)
)

Town of Westborough Wastewater)
Treatment Facility)
)

NPDES Permit No. MA0100412)
_____)

NPDES Appeal Nos. 05-07 & 05-08

ORDER DENYING INTERVENER STATUS AND
ALLOWING SUBMISSION OF AMICUS BRIEF

By Motion filed¹ on October 17, 2005, the Conservation Law Foundation ("CLF") seeks leave to intervene in the above-captioned matters and participate in all EAB proceedings in these matters. See Conservation Law Foundation's Motion for Leave to Intervene (October 17, 2005)

¹ Documents are "filed" with the Board on the date they are received.

and Memorandum of Law in Support of Conservation Law Foundation's Motion for Leave to Intervene (October 17, 2005) ("Memorandum"). CLF states that it is a non-profit, member-supported public interest organization that "undertakes litigation and other legal advocacy on behalf of its members' interests, and promotes public awareness, education, and citizen involvement in conserving natural resources, protecting public health, and promoting vital communities in the region." Memorandum at 8. CLF states further that it has a substantial organizational interest in restoration and protection of waters in New England and that the issues to be considered in the current matters "have an enormous impact on the water quality of the Assabet River, -issues that in fact will determine whether or not the River will ever achieve its water quality standards." *Id.* at 9. CLF requests that it be given "a full right to participate in EAB proceedings." *Id.* at 10.

Upon review, CLF's request for intervenor status is denied. However, CLF may, if it wishes, submit a brief in support of its position in the above-captioned matters and participate as *amicus curiae* in these matters. Any such *amicus* brief must be filed with the Board no later than November 4, 2005.²

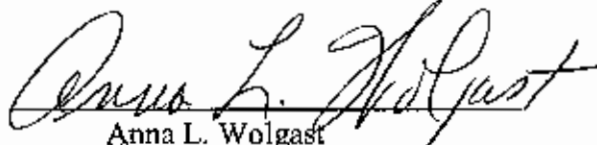
² The current regulations governing NPDES permit appeals do not explicitly provide for intervention. See 40 C.F.R. part 124. Although the Board has discretion, where appropriate, to allow intervention, the Board concludes that allowing CLF the opportunity to participate as *amicus curiae* will provide it with a sufficient degree participation in the above-captioned matters. See, e.g., *In re Dominion Energy Brayton Point, LLC (formerly USGen New England, Inc.)*, NPDES Appeal No. 03-12 (EAB, Feb. 19, 2004) (Order Granting Review) (denying Conservation Law Foundation intervenor status but allowing participation as *amicus*); *In re Tenn. Valley Auth.*, CAA Docket No. 00-6 (EAB, June 16, 2000) (Order Denying Motion to Intervene, Granting Leave to File Non-Party Briefs, and Scheduling Post-Hearing Briefing) (denying environmental groups' motion to intervene, but granting leave to file non-party briefs); *In re DPL Energy Montpelier Elec. Generating Station*, 9 E.A.D. 695, 696 (EAB 2001) (noting that EPA's
(continued...)

So ordered.³

Dated:

October 18, 2005

ENVIRONMENTAL APPEALS BOARD


Anna L. Wolgast
Environmental Appeals Judge

²(...continued)

Office of General Counsel and EPA Region V's Office of Regional Counsel had been allowed to participate *as amicus curiae* and file a brief).

³ In the future, when motions or submissions are filed with the Board referencing multiple appeal numbers, the Board must be provided with one signed original for each appeal number referenced.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Intervener Status and Allowing Submission of Amicus Brief in the matters of City of Marlborough Westerly Wastewater Treatment Facility, NPDES Appeal Nos. 05-05 & 05-09; Town of Maynard Water Pollution Control Facility, NPDES Appeal Nos. 05-06 & 05-12; and Town of Westborough Wastewater Treatment Facility, NPDES Appeal Nos. 05-07 & 05-08, were sent to the following persons in the manner indicated:

By First Class Mail:

Peter Shelley
John A. Pike
John L. Davenport
Conservation Law Foundation
62 Summer Street
Boston, MA 02110-1016

Joseph M. Hamilton
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester, MA 01608-1477

David Owen, Interim Town Administrator
Department of Public Works
Municipal Building, 195 Main Street
Maynard, MA 01754

Donald L. Anglchart
Gadsby Hannah LLP
225 Franklin Street
Boston, MA 02110

Kenneth L. Kimmell
Bernstein, Cushner & Kimmell, P.C.
585 Boylston Street, Suite 400
Boston, MA 02116

By Pouch Mail:

Samir Bukhari
Office of Regional Counsel
U.S. EPA, Region 1
1 Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

By Interoffice Mail:

Stephen Sweeney
Office of General Counsel (2355A)

Date: OCT 19 2005


Annette Duncan
Secretary