

EXHIBIT 4

UBWPAD RESPONSE TO COMMENTS

On March 23, 2007, the United States Environmental Protection Agency began the public comment period for a draft permit for the Upper Blackstone Water Pollution Abatement District (UBWPAD). A public meeting and a public hearing were held in Worcester, MA on May 9, 2007. At the public hearing, EPA extended the public comment period until May 25, 2007. Comments were received from UBWPAD, its consultant Camp Dresser and McKee and its attorneys, as well as from numerous other organizations and individuals. After review of the comments, EPA has determined to issue a final National Pollutant Discharge Elimination System (NPDES) permit for the UBWPAD facility.

The final permit is issued only by EPA. The permittees should contact the Massachusetts Department of Environmental Protection regarding authorization to discharge pursuant to the requirements of the Massachusetts Clean Water Act, as amended, Mass. Gen. Laws ch. 21, §§ 26-53. In addition, EPA has determined that Massachusetts has waived certification pursuant to Section 401(a)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1341(a)(1) and 40 C.F.R. Section 124.53.¹

The following responses address both written and oral comments provided to EPA during the comment period. Where comments are similar, we have cross-referenced rather than repeated relevant responses. This document also describes changes and clarifications EPA has made to the final permit.

This response is generally organized as follows:

Part A responds to comments from the following individuals and organizations: Massachusetts Department of Fish and Game, Riverways Program; Mark A. Briggs Blackstone River Watershed Council; Trout Unlimited; Mass Audubon; Blackstone River Valley National Heritage Corridor Commission; Blackstone Headwaters Coalition; Stephanie D. Matheny; Blackstone River Watershed Association; Narragansett Bay Estuary Program; Blackstone River Coalition; Rhode Island Bays, Rivers, & Watersheds Coordination Team; Senator Richard T. Moore; Save The Bay; Donald Pryor; Conservation Law Foundation; The Smart Growth Task Force, Bristol, Rhode Island Preserve Bristol; and Jan Reitsma.

Part B addresses comments received from Grace Ross; Tatnuck Brook Watershed Association; and City Councilor Frederick Rushton.

Part C addresses comments from Dr. Mauri S. Pelto.

¹ The final permit reflects that the permit is issued solely by EPA pursuant to its authority under the CWA. Please note we have modified footnote 4 of the permit which relates to limits for DO, pH range and seasonal fecal coliform to make clear that the limits are consistent with historical state certification requirements and are required by antibacksliding requirements.

Bay be monitored prior to mandating additional treatment on the wet weather discharge at Upper Blackstone?

Response #F22: The water quality-based phosphorus limit of 0.1 mg/l was established to ensure that designated uses in the Blackstone River are achieved and maintained at all times. The limit was established under 7Q10 flow conditions, consistent with the requirements in the Massachusetts Surface Water Quality Standards, in order to ensure that the minimum criteria that are necessary to protect designated uses are met under worst case conditions and that water quality is better than the minimum criteria under higher flow conditions. These minimum criteria are only protective of designated uses if aquatic life are exposed to these levels infrequently and for short periods of time. We disagree that the phosphorus limit is not necessary during high flow events to ensure that water quality standards will be met. The UBWPAD facility discharges into the headwaters of the Blackstone River and is very large (peak hour flow of 160 MGD during wet weather) relative to the flow in the river. The discharge dominates the flow in the river under low flow conditions and during most storm events. In addition to the substantial increase in discharge flow during wet weather conditions, the background concentration of phosphorus is significantly elevated compared to dry weather conditions (see Response #C1 and *Blackstone River Watershed 2003 DWM Water Quality Monitoring Data*, May 2005 (MassDEP)). Wet weather monitoring conducted by MassDEP under its Smart Monitoring program at a water quality station (Middle River) just upstream of the UBWPAD discharge, at a time when the Worcester Combined Sewer Overflow Facility upstream was not discharging, resulted in total phosphorus concentrations ranging from 45 - 330 ug/l with an average of 132 ug/l (MassDEP Smart Monitoring data: 9/20/2000, 11/20/2003, 4/28/2004, 6/23/2004). The lack of dilution and the elevated background concentrations of phosphorus during wet weather events supports the applicability of the 0.1 mg/l total phosphorus limit under all flow conditions.

With regard to nitrogen, RIDEM's 2004 study documents that current total nitrogen loads to the Seekonk River are 24 times higher than the total nitrogen load to all of Narragansett Bay on a per unit area basis. If the concentration limitations recommended by the report were used to establish mass limits using the design flows of the waste water treatment facilities, the Seekonk River would receive nitrogen loads of approximately 10 times higher than the Bay-wide loads per unit area. With the limitations established as concentration limits (5.0 mg/l for UBWPAD), at current flows the Seekonk River would receive nitrogen loads of about 6.5 times higher than the Bay-wide load. Even at 6.5 times the Bay-wide loading, further reductions may be necessary and the monitoring program in place will allow for making this determination (see Response #E1). Based on the MERL tank experiments, a nitrogen loading of between 2 times and 4 times the Bay-wide loading may be necessary to achieve water quality standards. We have established UBWPAD's limit at 5.0 mg/l in light of uncertainties in the physical model. See Response #F18A. As indicated in the Fact Sheet and in Response #F6, EPA believes that the limit cannot be any less stringent than 5.0 mg/l under all flow conditions and ensure that water quality standards will be met. Concentration based total nitrogen limits have also been established in permits for many other municipal treatment facilities in Massachusetts and Rhode Island that discharge to Narragansett Bay in order to achieve a nitrogen loading of 6.5 times the Bay-wide loading.

Total loading to Narragansett Bay greatly exceeds that water body's capacity to assimilate nitrogen. All discharges of nitrogen from the UBWPAD, those occurring during dry and wet weather, are contributing to substantial water quality impairments in the Bay. It is essential, therefore, that the Permit limit these discharges. There are uncertainties in the physical model for the Bay, and it is not yet feasible to precisely identify limits for all dischargers that may ultimately be necessary for standards to be met at all times. The Region has concluded, however, that a nitrogen limit at least as stringent as 5.0 mg/l for the UBWPAD is necessary to prevent further degradation of the Bay. In accordance with the Clean Water Act's mandate, the Region has included that limit in the UBWPAD's permit.

Rhode Island has a strategy for addressing wet weather impacts from point source dischargers that will achieve a substantial amount of reduction in the frequency and volume of overflows. CSO remediation for the NBC facilities includes extensive tunnel storage and maximization of the amount of flows receiving full treatment. Discharges not receiving full treatment will be very infrequent. In contrast, UBWPAD has no significant storage capability and the frequency and volume of wastewater not receiving full treatment will be much greater than NBC.

Additional upgrades evaluated for achieving the new nutrient limits at the UBWPAD facility should carefully consider the amount of storm water in the system (infiltration/inflow in separate sewers as well as remaining CSO contributions to the plant). Controlling the excessive amount of rainwater and groundwater in the system will not only reduce the size of the facilities necessary to comply with the permit limits but will also reduce operation and maintenance cost, in particular chemical and energy cost.

Comment #F23: Footnote 3 on page 5 of 19 (pertaining to CBOD5, TSS, ammonia, total nitrogen, phosphorus, metals and whole effluent toxicity testing) indicates, "For each day that there is a discharge from outfall 001A, 24-hour composite samples will consist of hourly grab samples taken from outfall 001A for the duration of the discharge." An automatic sampler exists at this outfall and should be allowed for use in obtaining a composite sample from outfall 001A for the duration of the event.

Footnote 5 on page 5 of 19 (pertaining to fecal coliform, total residual chlorine and dissolved oxygen) indicates, "For each day that there is a discharge from outfall 001A, a grab sample will be taken from outfall 001A within the first hour of the discharge, and every three hours thereafter for the duration of the discharge, and combined proportional to flow with a grab sample taken concurrently from outfall 001" Fecal coliform, MC and DO need not be a blended sample – each discharge will monitored independently and meet the requirements of the permit. In addition, grab samples every three hours for the duration of the discharge from outfall 001A is excessive, inconsistent with other permits in the watershed and would require "round-the-clock" staffing of trained laboratory personnel during and after a discharge event. The District has established dosing rates during a storm event which is flow paced and has shown to achieve the required fecal coliform kill. The SCADA system tracks chemical dosing which will confirm adequate

UBWPAD has offered estimates in oral and written comments ranging from \$100 to \$200 million to construct upgrades necessary to meet the new nutrient limits. EPA cannot evaluate the accuracy of nor agree with these figures as we do not know the basis for these estimates. We (and UBWPAD) do not yet know the most cost-effective treatment options for the UBWPAD facility. In addition, we do not yet know how and over what time period cost of treatment would be funded. As stated elsewhere, EPA intends to work with UBWPAD and its consultants to discuss cost issues in the context of scheduling.

Comment #F27: The schedule for whole effluent toxicity testing presented on page 7 of the permit is too restrictive, requiring that the test be conducted during the second week of January, April, July and October. The previous permit required only that one test be conducted each quarter with no definition on when during each quarter the test would be conducted. It is helpful when there is more flexibility in scheduling tests in any quarter to coordinate with the workload of the few labs in the nation that perform these tests, as well as the Upper Blackstone staffing and vacation schedules. It is suggested that more flexibility be offered in the scheduling of these tests.

Response #F27: Identifying the time when quarterly samples are taken is necessary to ensure that samples are representative and not selectively conducted only at times when the treatment performance is at its best. This is now a standard requirement in EPA Region 1's permits and has not proven to be a significant burden for either labs or other dischargers.

Comment #F28: Page 1 of 19 of the permit states, "The City of Worcester, the Towns of Millbury, Auburn, Holden, West Boylston and Rutland, and the Cherry Valley Sewer District are co-permittees for Part D and E. Only municipalities specifically listed as co-permittees are authorized to discharge waste water into the UBWPAD facility."

The Fact Sheet, page 1, defines Co-Permittees as follows: The municipalities of Worcester, Millbury, Auburn, Holden, West Boylston, Rutland and the Cherry Valley Sewer District are co-permittees for specific activities required by the permits as set forth in Section IV.H of this Fact Sheet and Section I.D and I.E of the Draft Permit.

Section I of the Fact Sheet states, "The facility serves Worcester and portions of Auburn, West Boylston, Holden, Rutland, Oxford and Millbury."

Section IV.H, last paragraph, states, "Because Worcester, Millbury, Auburn, Holden, West Boylston, Rutland and the Cherry Valley Sewer District each own and operate collections systems that discharge to UBWPAD's treatment plant, these entities have been included as co-permittees for the specific permit requirements discussed in the paragraph above."

Refer to Attachment A regarding the legal issues associated with the Co-Permittee, however, note the inconsistencies in permit needs regarding the municipalities that discharge to the Upper Blackstone Water Pollution Abatement District. A portion of

Sutton is conveyed through the Millbury collection system. The District also serves portions of Shrewsbury (Goodard Park) and Paxton (Anna Maria) via connections to the sewer system of Worcester and Oxford (Thayer Pond) via a connection to the Auburn system.

Also, please clarify that the language on Page 1 of the permit does not exclude the District from accepting septage and sludge from other communities.

Part D states, "The permittee and co-permittees are authorized to discharge only in accordance with the terms and conditions of this permit [and] only from the outfall(s) listed in Part I A.1." This is contrary to page 1 of 19 which indicates that the co-permittees discharge to the UBWPAD facility and District discharges from the outfall(s).

Response #F28: EPA derived the list of co-permittees set forth in the Draft Permit from information provided by UBWPAD in its re-application; specifically, in Response to Question A4 on Form 2A, UBWPAD indicated that its treatment facility serves the following municipalities: Auburn, Cherry Valley Sewer District, Holden, Millbury, Rutland, West Boylston and Worcester. Page 1 of the Draft Permit, the top of page 1 of the Fact Sheet, and page 19 of the Fact Sheet list co-permittees consistent with the information provided on the re-application. Section I of the Fact Sheet should have included Cherry Valley Sewer District and not Oxford. Notwithstanding the information provided in the permit application, EPA notes that UBWPAD's Facilities Plan does indicate that certain other municipal systems contribute wastewater to UBWPAD. The portions of Sutton, Shrewsbury, Oxford and Paxton that are sewered to the UBWPAD, or will be sewered to the UBWPAD during the life of this permit, are very small; accordingly, EPA will not include these three permittees as "co-permittees" in this permit. EPA may, however, include them as "co-permittees" in a future permit reissuance or a separate permit action. In addition, in the Final Permit, EPA has amended the language on Page 1 of the permit to make clear that these communities are not prohibited from discharging to UBWPAD.

The language on Page 1 of the permit refers to wastewater flows and not to septage and sludge deliveries.

The language in Part D of the permit is general permit language that applies to the permittee as well as the co-permittees. The language indicates that the only outfalls authorized for wastewater discharges are those listed on page 1 of the permit. We have clarified Section D of the final permit to make it clear that the term discharge in this context refers to discharges to waters of the United States.

Comment #F29: In order to achieve the proposed permit limits of 5 mg/L total nitrogen and 0.1 mg/L total phosphorus, significant modifications and additions to the current facility under construction would have to be implemented at a capital cost of \$150,000,000 in today's dollars. The increase in operation and maintenance costs to achieve the limits is expected to approach \$3,700,000 per year. The required treatment processes to achieve these limits is not sustainable, especially given that the benefits in the receiving waters realized from achieving these limits is suspect.

With regard to the comment that EPA should further evaluate non-point and other sources of nutrients before proceeding with permits for point sources, please see Responses #A8 and #C1.

With regard to its comment that Massachusetts incorrectly listed certain reaches of the Blackstone River on its 303(d) List of Impaired Waters, EPA has several responses. First, the comments provides no specific information that would call the listing into question. Second, the permit proceeding is not the appropriate forum for challenging the state's listing or EPA's approval of it. The permittee could have raised this issue during the listing process. Third, irrespective of a state's current 303(d) list, EPA is obligated to impose a water quality-based effluent limit for a pollutant if there is a reasonable potential that the discharge will cause or contribute to a violation of water quality standards. *See* 33 U.S.C. §1311(b)(1)(C) and 40 CFR §122.44(d)(5).

With reference to the comment that the new permit limits constitute unfunded mandates, *see* Response #B2.

Comment #F45: For several reasons (explained below), the co-permittees should be deleted from the proposed permit. The District challenges the proposed expansion of its NPDES permit to include co-permittees comprised of satellite sanitary sewer collection systems not owned or operated by the District or of any entity whose wastewater, septage or sludge the District accepts. The Agency's unwarranted expansion of its authority fails to consider the numerous and varied legal relationships and state municipal powers governing intercommunity collection systems, and is not in accordance with law. EPA's attempt to regulate entities discharging wastewater to the District's treatment facility usurps and undermines state and municipal authority. As the District has previously informed EPA (e.g., during the 1999 Permit renewal process), the District does not have the authority to legally bind co-permittees in the manner proposed by EPA.

None of the affected municipalities participated in or signed the Permit application, nor did they intend to be permit applicants. In addition, EPA did not make any provision in the Draft Permit for the targeted co-permittees to become signatories (thereby binding them to the terms of the permit). Before EPA can add any co-permittees to the permit, it will need to resolve these legal issues with the State and the respective municipalities involved.

The Draft Permit imposes legal and administrative burdens on the District for management of member sewers through the co-permittee process that are not allowed in the District's enabling legislation and that the District has no authority to accept.

The District does not own or operate the wastewater collection systems which discharge to its facility. The operation and maintenance of such systems is adequately regulated by the Commonwealth pursuant to 314 CMR 12.00. We understand that under NPDES permit issued to the Massachusetts Water Resources Authority ("MWRA") (permit no. MA0103284), co-permittee status is driven by ownership of infrastructure (e.g., pipes, treatment facility). We further understand that MWRA member communities are not

included as co-permittees [with very few exceptions] and that, for portions of the regional sewer system operated by member communities, reporting of sanitary sewer overflows are governed by the reporting and basic operation and maintenance requirements contained in the DEP regulations at 314 CMR 12.00. That practice should be followed here.

The Draft Permit's language purporting to limit which entities may discharge to the District conflicts with and undermines the District's authority under its enabling statute [Chapter 752 of the Acts of 1968, as amended] which authorizes the District to determine which entities may become members of the District and/or discharge to the District's regional treatment facilities. Since it is questionable whether such federal action is a valid exercise of Congress' constitutionally delegated powers, under the Tenth Amendment of the U.S. Constitution, the State enabling statute should be given precedence.

As explained below, the Draft Permit purports to regulate satellite wastewater collection systems as co-permittees under a proposed (not final) Sanitary Sewer Overflow (SSO) Rule regardless of whether or not these systems result in overflows that reach waters of the United States. This raises serious questions about whether the Agency has subject matter jurisdiction under the Clean Water Act [over discharges that do not reach, nor are they likely to reach, waters of the United States]. The Second Circuit recently ruled, in the *Waterkeeper Alliance* case (also known as the CAFO decision) that unless there is an actual discharge of a pollutant to navigable waters, there is no point source discharge, no statutory violation of the CWA, no requirement to comply with EPA regulations for point source discharges, and no duty to seek or obtain an NPDES permit in the first instance. See *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). The Court stressed that: "The CWA gives the EPA jurisdiction to regulate and control only actual discharges - not potential discharges, and certainly not point sources themselves." (Emphasis in original).

The primary function of collection systems is to convey wastewater to the District's regional plant for treatment, but not to provide treatment. Under the current regulatory definition of POTW, neither CSOs nor SSOs may be deemed part of the POTW because they do not convey wastewater to the POTW, but instead result in a discharge prior to the POTW. The D.C. Circuit ruled in the *Montgomery Environmental Coalition v. Costle* case, 649 F.2d. 568 (D.C. ' Cir. 1980), that CSOs are not part of the "treatment works" under the 1979 or the 1980 definition, and consequently they are not subject to the "secondary treatment" standards applicable to POTWs. Since this decision, neither EPA nor the courts have formally determined that SSOs must be treated differently from CSOs.

The proposed addition of the satellite collection systems as co-permittees violates and/or circumvents the rulemaking procedural requirements. Any attempt to implement a proposed rule or materially change or rewrite a regulation through policy deprives the District and the impacted ratepayers of their fundamental rights to public notice, review and comment on such important matters.

While a proposed SSO regulation was signed by EPA Administrator Browner in 2001, the Administration withdrew the proposal before it was published, and the actual regulatory proposal still appears to be far in the future. Had the proposed SSO Rule been promulgated, it would have applied NPDES permit conditions to satellite systems in one of two ways: the NPDES permitting authority would have been given the discretion to give a collection system permit to either the satellite collection system owner/operator or the regional publicly owned treatment works (POTW) that accepts its flow.

The Association of Metropolitan Sewerage Agencies ("AMSA") has submitted substantial comments on the proposed SSO Rule opposing the discretion the Rule would have given to NPDES permitting authorities to decide which entity receives a collection system permit, stating that "the only appropriate permittee is the satellite collection system owner/operator entity." See AMSA letter to EPA Administrator Christine Todd Whitman, dated June 8, 2001. As EPA is aware, the draft rule's CMOM (capacity, management, operation and maintenance), reporting, public notification and recordkeeping provisions would be burdensome to all potential permittees regardless of the size.

The Draft Permit states, on page 1 of 19, that "[o]nly municipalities specifically listed as co-permittees are authorized to discharge wastewater into the UBWPAD facility." The Draft Permit's proposed list does not include all dischargers to the District. For example; Sutton, Oxford, Paxton, and Shrewsbury discharge to the District's facility through their respective collection systems. The Draft Permit and its Fact Sheet are unclear as to whether its co-permittee language precludes the District from continuing to accept sludge and septage per its authority under the state enabling act. The Draft Permit language should not alter or diminish in any way the District's current authority under its enabling statute including, without limitation, its authority to accept wastewater, sludge or septage from member municipalities or otherwise.

Response #F45: In its comment above, UBWPAD objects to imposition of any requirements through the permit on the operation and maintenance of the "satellite" municipal collection systems that discharge waste to UBWPAD. UBWPAD does not challenge EPA's general authority to regulate appropriate operation and maintenance of collection systems. Rather, UBWPAD comments that EPA cannot impose such requirements on the satellite systems through this permit as they are separate legal entities from the owner/operator of the treatment facilities and outfalls.

Section 212(2)(A) of the CWA defines "treatment works" to include "any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature... including ... intercepting sewers, outfall sewers, sewage collection systems...." EPA regulations define the term "publicly owned treatment works" similarly at 40 CFR 122.2 and 403.1. As UBWPAD is well aware, historically, the Region has issued an NPDES permit only to the legal entity owning and operating the wastewater treatment plant, which is only a portion of the "treatment works" serving the communities for whom the UBWPAD provides wastewater treatment. The Region has now chosen to provide a more comprehensive approach to permitting

these facilities to ensure proper operation and compliance of the entire treatment works, not a portion of it.

The requirements in the permit imposed on satellite systems are set forth in the Draft Permit in Part I.D. ("Unauthorized Discharges") and Part I.E. ("Operation and Maintenance of the Sewer System"). Those provisions are as follows:

Part D provides that the permit only authorizes discharges through two specific outfalls. Part D also states that discharges through sanitary sewer overflows are not authorized and requires that UBWPAD and co-permittees report to EPA and Mass DEP any such overflows.

Part E of the Draft sets forth requirements related to operation and maintenance of the sewer system. Part E provides that operation and maintenance shall be in compliance with the General Requirements of Part II. The General Requirements of Part II, in turn, are standard conditions included in all NPDES permits. They track certain required conditions set forth in EPA's regulations such as duty to comply [40 CFR 122.41(a)], permit actions (40 CFR 122.41(f)) and duty to provide information [40 CFR 122.41(h)]; and a reopener clause [40 CFR 122.44(c) and 122.44(d)(vi)(C)(4)]. The standard conditions also include a recitation of EPA regulations related to confidentiality of information, and provisions regarding the impact of the permit on other local, State or Federal requirements. Part E also sets forth particular requirements regarding operation and maintenance of satellite collection systems in the respective municipal POTWs, including:

- provision of adequate staff to carry out the operation, maintenance, repair and testing functions required to ensure compliance with the terms and conditions of the permit;
- maintenance of an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failure of the sewer system infrastructure, including an inspection; and
- development and implementation of a plan to control infiltration and inflow (I/I) to the separate sewer system, including annual reporting of activities taken to minimize I/I; and
- provision of an alternate power source to operate the treatment works.

Proper operation and maintenance at 40 CFR 122.41(e). This standard permit condition requires proper operation and maintenance of permitted wastewater systems and related facilities to achieve compliance with permit conditions; and

Duty to mitigate at 40 CFR 122.41(d). This standard condition requires the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

EPA's regulations include a duty to provide information at 40 CFR 122.41(h). This standard condition requires the permittee to provide any information which EPA may

request to determine, among other things, compliance with the permit. In addition, the regulation requires the permittee to provide copies of records required to be kept by the permit.

Based on these provisions in the statute and regulation, EPA clearly has authority to require appropriate operation and maintenance of collection systems necessary to achieve compliance with an NPDES permit. Since the District does not own or operate some of the collection systems that discharge to the treatment works, it is appropriate to apply these conditions to the owners/operators as co-permittees. The requirements set forth in Parts D and E give more specific direction to the satellite systems as to what is expected related to operation and maintenance, duty to mitigate and reporting.

Under *Montgomery Environmental Coalition v. Costle*, 649 F.2d 568 (D.C. Cir. 1980), combined flows that exceed the design capacity of a combined system and are intentionally diverted away from a treatment works are not subject to secondary treatment requirements but rather are subject to the technology requirements applicable to non-POTWs. *Montgomery* does not address which NPDES permit conditions may be applicable to collection systems attached to treatment plants, nor does it address the circumstance of unpermitted discharges such as SSOs. This case simply is not relevant to the co-permittee issue raised by the comment.

The *Waterkeeper Alliance* case, 399 F.3d 486, also does not restrict EPA's ability to impose conditions on the operation and maintenance of the collection systems owned and operated by the satellite systems. *Waterkeeper Alliance* involved review of challenges to regulations setting forth NPDES and effluent limitation guidelines and standards for Concentrated Animal Feeding Operations (CAFOs). The Second Circuit vacated that portion of the regulation that required CAFOs to apply for NPDES permits or otherwise demonstrate that they have no potential to discharge. The Court reasoned that effluent limitations can only be applied to point sources that actually discharge, not that simply have the potential to discharge. *Id.* at 505. In this matter, wastewater from the treatment works (including the collection system) is discharged through the outfalls at UBWPAD's treatment plant. Therefore, the treatment works (including the collection system) is subject to permitting. EPA has determined that operators of the collection system portion of the POTW must comply with the operation and maintenance requirements in the draft permit to ensure that compliance with the permit and the goals of the Clean Water Act are achieved.

EPA does not agree that the co-permittees each need to sign the permit application. The permit application requirements are designed to facilitate the permitting process and to aid the permitting authority by ensuring submittal of relevant information. In this case, UBWPAD submitted the permit application, including requisite information about satellite systems. As detailed above, EPA is authorized to regulate the entire POTW (including the treatment plant and collection systems). That UBWPAD 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 that EPA issue separate permits to UBWPAD and

the satellite systems. Further, EPA provided a copy of the Fact Sheet and Draft Permit to each of the satellite systems included as "co-permittees" in the Final Permit. Each was invited to attend the public hearing and to submit oral and/or written comments on the Draft Permit.

UBWPAD also comments that it does not have authority to legally bind the satellite systems and that the requirements will impose additional "legal and administrative burdens" on UBWPAD. Through this permit, EPA has made each municipality responsible for implementation of the requirements of Parts D and E applicable to the portion of the collection system and/or treatment plant that it owns or operates. For instance, each municipality would be responsible to report to EPA any SSO that occurred from its collection system. Each municipality would be separately responsible for developing and implementing a plan to control I/I and reporting on the progress of its respective plan. EPA recognizes that this approach is a change from the expired permit, which required UBWPAD to serve in the role of facilitating a work group of its member communities to develop and implement strategies to eliminate excessive I/I. The expired permit also included a provision indicating that EPA and MassDEP might seek to add the member communities as co-permittees directly regulated under the permit if adequate progress was not made. That time has come: I/I flows to the UBWPAD continue to be very high -- at 15 million gallons per day (see NPDES permit application at page 7) -- and more aggressive action is necessary to abate excessive I/I. The shift in approach to having EPA directly oversee the satellites as co-permittees should reduce any "legal and administrative burdens" on UBWPAD. While EPA believes that the language in the Draft Permit makes clear that each co-permittee is responsible for implementation of the operation and maintenance and reporting requirements of Parts D and E related to its respective system, the Final Permit includes an additional sentence to that effect.

The language of one requirement in Part E related to I/I control does require UBWPAD to take measures to control discharges from the satellite communities. That provision states: "The permittee shall require, through appropriate agreement, that all member communities control discharges to the permittee's POTW sufficiently to ensure that high flows do not cause or contribute to a violation of the permittee's effluent limitation or cause overflows from the permittee's collection system." UBWPAD's enabling legislation appears sufficiently broad to meet this provision. In particular, the legislation indicates that the purpose of establishing UBWPAD is to treat sewage from the local communities, not I/I such as groundwater or rainwater. See Chapter 752 of Act of 1968 at Sections 6 and 16. The legislation also gives the District authority to prevent the discharge into the sewers of substances which may damage or impair the sewerage collection and sewerage treatment system or interfere with its maintenance or operation. *Id.* at Section 7. In any event, the intent of the permit provision cited above is to ensure that high flows do not cause or contribute to violations of effluent limitations or cause unauthorized bypasses at the treatment plant. To address UBWPAD's concern, EPA has modified the language in the Final Permit to indicate that both the permittee and co-permittees are responsible to ensure that high flows do not cause such violations.

UBWPAD also notes that the Draft Permit does not include all satellite dischargers. UBWPAD specifically notes that EPA failed to include Sutton, Oxford, Paxton and Shrewsbury. EPA derived the initial list of discharges from information provided by UBWPAD in its re-application; specifically, in Response to Question A4 on Form 2A, UBWPAD indicated that the UBWPAD facility serves the following municipalities: Auburn, Cherry Valley Sewer District, Holden, Millbury, and Rutland. EPA notes that UBWPAD's Facilities Plan, however, does indicate that the municipal systems of Sutton, Oxford, Paxton and Shrewsbury also contribute wastewater to UBWPAD. As the contributions from these municipal systems are relatively smaller than the other satellite systems, EPA will not include these four municipalities as "co-permittees" in this permit. EPA may, however, include them as "co-permittees" in the future. In addition, in the Final Permit, EPA has amended the language on Page 1 of the permit to make clear that these communities are not prohibited from discharging to UBWPAD.

UBWPAD comments that the co-permittee language in the Draft Permit is unclear as to whether it precludes the District from continuing to accept sludge and septage per its authority under the state enabling act. The language in the Draft Permit referenced by UBWPAD only addresses discharges of wastewater. See Draft Permit at 1 (indicating that only co-permittees "are authorized to discharge wastewater into the UBWPAD facility"). To address UBWPAD's concern, EPA has clarified this intent in the final permit.

Comment #F46: Compliance Schedule. The Draft Permit Fact Sheet contains EPA's admission that the District will not be able to comply immediately with the proposed nutrient limits and states that EPA will work with the District to develop a schedule for the planning, design and construction of facilities necessary to meet these limits and that takes into account currently ongoing facility upgrades. EPA should include that schedule in the District's final permit. The Massachusetts permitting regulations control the issuance of permits in that state and these regulations allow compliance schedules and do not specify any term limits for such schedules.

In addition, the Fact Sheet states that the Draft Permit would supersede the permit issued on September 30, 1999. As the Agency knows, the District appealed certain conditions of the 1999 permit. After extensive negotiations with EPA, and in consideration of various accommodations by the parties (including the District's withdrawal of its appeal), a settlement agreement was executed and the permit was modified on December 19, 2001 (the "2001 Permit"). The settlement agreement, and the administrative consent order issued there under in 2002 (the "Consent Order"), gave the District an 8-year compliance schedule, until August, 2009, to complete treatment plant upgrades and meet many of the 2001 Permit limits, including a phosphorus limit of 0.75 mg/l. Public notice of this compliance schedule and the interim permit limits effective during the permit was provided in the 2001 Permit's fact sheet or statement of basis.

Significant upgrades are currently underway at the District at costs of over \$180 million, which will further limit the discharge of pollutants to the Blackstone River including nitrogen and phosphorus. In 2009, the new facilities will achieve a better than required