

**United States Environmental Protection Agency
Region I - New England**

IN THE MATTER OF)	DOCKET NO. 02-07
)	
Upper Blackstone Water Pollution)	FINDINGS OF VIOLATION
Abatement District)	
NPDES No. MA0102369)	AND
)	
Proceedings under Section 309(a)(3))	ORDER FOR COMPLIANCE
of the Clean Water Act, as amended,)	
33 U.S.C. §1319(a)(3))	

I. Statutory Authority

The following FINDINGS are made and ORDER issued pursuant to Section 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §1319(a)(3), which grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. §1342. This authority has been delegated to EPA's Regional Administrators, and in turn to the Director of the Office of Environmental Stewardship.

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. §1311, and the conditions of NPDES Permit No. MA0102369. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. §1319(a)(5)(A), the Order provides a schedule for compliance that the Director of the Office of Environmental Stewardship has determined to be reasonable.

II. Findings

The Director of the Office of Environmental Stewardship makes the following findings of fact:

1. The Upper Blackstone Water Pollution Abatement District (the "District") is a district having jurisdiction over the disposal of sewage established under the laws of the Commonwealth of Massachusetts, and is therefore a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. §1362(4).
2. The District is a person under Section 502(5) of the Act, 33 U.S.C. §1362(5). The District is the owner and operator of a wastewater treatment facility (the "Facility") from which it discharges pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§1362(6) and (12), from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. §1362(14), to the Blackstone River. The Blackstone River is a Class B waterway and navigable water under Section 502(7) of the Act, 33 U.S.C. §1362(7).
3. On September 30, 1992, the District was reissued NPDES Permit No. MA0102369 (the "1992 Permit") by the Director of the Water Management Division of EPA, Region I, under the authority given to the Administrator of EPA by Section 402 of the Clean Water Act, 33 U.S.C. §1342. This authority had been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region I, who in turn delegated this authority to the Director of the Water Management Division.
4. On January 23, 1998, the District submitted an application for renewal of the 1992 Permit. On February 1, 2000, EPA advised the District that the application appeared complete and that the conditions of the 1992 Permit would continue in force until the 1992 Permit was

- reissued and the reissued permit became effective in accordance with 40 C.F.R. § 122.6.
5. On September 30, 1999, the District was reissued NPDES permit No. MA0102369 (the "1999 Permit") by the Director of the Office of Ecosystem Protection of EPA, Region I, under the authority given to the Administrator of EPA by Section 402 of the Clean Water Act, 33 U.S.C. §1342. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region I, who has in turn delegated this authority to the Director of the Office of Ecosystem Protection.
 6. On August 10, 2000, the District filed a Petition for Review of certain conditions of the 1999 Permit with the Environmental Appeals Board. The appealed conditions included the discharge limitations for Total Flow, Carbonaceous Biochemical Oxygen Demand (CBOD), Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS) (June through October and May), TSS Percent Removal, Total Phosphorus, Total Ammonia Nitrogen, Total Residual Chlorine, Total Cadmium, Total Zinc, and Total Copper. Consequently, the discharge limitations for Total Flow, CBOD, BOD, TSS (June through October and May), TSS Percent Removal, Total Phosphorus, Total Ammonia Nitrogen, Total Residual Chlorine, Total Cadmium, Total Zinc, Total Copper, and Total Nickel, contained in District's 1992 permit, remained in effect pending the resolution of the District's Petition for Review.
 7. On April 10, 2001, EPA issued a Notice of Withdrawal of Certain Permit Conditions, Notice of Stayed Permit Conditions and Notice of Uncontested Severable Conditions causing all uncontested conditions of the 1999 Permit to become effective on May 10, 2001.

8. Pursuant to a settlement agreement among the District, EPA, and the MADEP, EPA and the MADEP issued a modification to the 1999 Permit (the "Modified 1999 Permit"). The modification included changes to the discharge limitations for Total Flow, CBOD, BOD, TSS (June through October and May), TSS Percent Removal, Total Phosphorus, Total Ammonia Nitrogen, Total Residual Chlorine, Total Cadmium, Total Zinc, and Total Copper limits. The District has withdrawn its petition for review of the 1999 Permit and the Modified 1999 Permit is now effective.
9. The Modified 1999 Permit authorizes the District to discharge pollutants from a point source at the Facility to the Blackstone River subject to the effluent limitations, monitoring requirements and other conditions specified in the Modified 1999 Permit.
10. Pursuant to Section 301(b)(1)(C) of the Act, 33 U.S.C. §1311(b), the 1992 Permit and the Modified 1999 Permit require that the District meet effluent limitations for, among other things, Total Flow, CBOD, TSS, TSS Percent Removal, Total Ammonia Nitrogen, Total Residual Chlorine, Total Cadmium, Total Zinc, and Total Copper limits, and the Modified 1999 Permit also requires the District to comply with Total Phosphorus limits.
11. The District has discharged Total Suspended Solids and Total Ammonia Nitrogen, pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6), in excess of the effluent limits set forth in the 1992 Permit and is not expected to fully comply with the effluent limitations in the Modified 1999 Permit until the facilities noted under Section III are constructed.
12. Section 301(a) of the Act, 33 U.S.C. §1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms

and conditions of a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.

13. The District's discharge of wastewater from the Facility to the Blackstone River in excess of limits in the 1992 Permit occurred in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a). Any future discharge of wastewater to the Blackstone River by the District in excess of limits in the Modified 1999 Permit will be in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).
14. On November 2, 2001, the District submitted the "Upper Blackstone Water Pollution Abatement District Regional Wastewater Treatment Facilities Plan" dated October 2001 that was prepared by Camp, Dresser & McKee (hereinafter referred to as the Facilities Plan) to EPA for comment and the MADEP for approval.

III. Order

Accordingly, pursuant to Section 309(a)(3) of the Clean Water Act, it is hereby ordered that the District shall comply with the following:

Phase I Implementation of the Wastewater Treatment Facility Upgrade and Expansion

1. On, or before, July 14, 2003, the District shall complete the design of the Phase I facilities identified in the Facilities Plan, as approved by the MADEP, and submit plans and specifications to the MADEP for approval and EPA for review.
2. Within 120 days of the MADEP's approval of the Phase I plans and specifications, the District shall advertise for bids.
3. On, or before, January 7, 2004, the District shall open bids and award the contract for the construction of the Phase I facilities.

4. On, or before, April 1, 2005, the District shall complete construction and begin operation of the upgraded disinfection facilities.
5. On, or before, August 1, 2006, the District shall complete construction and begin operation of the remaining Phase I facilities.

Phase II Implementation of the Wastewater Treatment Facility Upgrade and Expansion

6. On, or before, February 22, 2005, the District shall initiate design of the Phase II facilities identified in the Facilities Plan, as approved by the MADEP.
7. On, or before, August 1, 2006, the District shall complete the design of the Phase II facilities identified in the Facilities Plan approved by the MADEP and submit plans and specifications to the MADEP for approval and EPA for review.
8. Within 120 days of the MADEP's approval of the Phase II plans and specifications, the District shall advertise for bids.
9. On, or before, January 26, 2007, the District shall open bids and award the contract for the construction of the Phase II facilities.
10. On, or before, August 5, 2009, the District shall complete construction of the Phase II facilities and attain compliance with the effluent limitations contained in its Modified Permit.

Phosphorus

11. Within fifteen (15) months of the issuance of this Order, the District shall complete the Phosphorus loading analyses that are necessary to characterize the magnitude and variability of Phosphorus loadings to the District's wastewater treatment facility as well as the Phosphorus loadings discharged from the District's wastewater treatment facility to

the Blackstone River and develop an optimization plan to maximize the removal of Phosphorus by the District's wastewater treatment facility. The optimization plan shall be submitted to EPA for review and approval and shall:

- a. include the results of the Phosphorus loading analyses;
- b. assess the cost and viability of process control modifications including chemical addition and recommend specific measures for reducing the Phosphorus discharged from the District's wastewater treatment facility pending completion of the Phase I and II facilities referenced in Paragraphs III. 1. through III. 10. of this Order;
- c. assess whether influent Phosphorus loadings warrant the establishment of local limits for Phosphorus; and,
- d. include a written proposal and justification for interim Phosphorus limits to be included in this Order following the implementation of the recommendations proposed in the optimization plan. The interim Phosphorus limits shall become effective and shall be incorporated herein upon EPA's approval. Until such time as the EPA establishes interim limits for Phosphorus, the District shall monitor its wastewater effluent in accordance with the requirements of its Permit, shall comply with the schedules and requirements set forth in Paragraphs III. 1. through III. 10., and shall operate its existing wastewater treatment facility to maximize compliance with the CWA and its NPDES permit.

12. Upon the EPA's approval of the plan, the District shall implement the optimization plan's recommendations in accordance with the schedule, which shall be incorporated herein.

Whole Effluent Toxicity Evaluations

13. Following the issuance of this Order, a second sample of the effluent shall be collected and tested for toxicity utilizing the procedures established in the Modified 1999 Permit. If any whole effluent toxicity sample analysis indicates toxicity, or the sample or analysis are determined to be invalid, the results of the followup toxicity testing and associated chemical parameters shall be reported to the MADEP and EPA within 30 days of the previous test.
14. Within forty-five days of a) the second of any two consecutive toxicity test results indicating toxicity or b) the third toxicity test result within a twelve-month period indicating toxicity, the District shall notify the MADEP and EPA and submit a scope of work for the investigation of the source of the toxicity to EPA (hereinafter referred to as the Toxicity Reduction Evaluation SOW). The Toxicity Reduction Evaluation SOW shall provide for the preparation of an engineering report (hereinafter referred to as the Toxicity Reduction Evaluation Report) consistent with EPA's Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants, EPA/833B-99/002, August, 1999. It shall also include a proposed schedule for submission of the Toxicity Reduction Evaluation Report to EPA.
15. Upon EPA's approval of the Toxicity Reduction Evaluation SOW, the District shall implement the Toxicity Reduction Evaluation SOW and submit the Toxicity Reduction

Evaluation Report in accordance with the approved schedule, which shall be incorporated herein.

16. Upon EPA's approval of the Toxicity Reduction Evaluation Report, the District shall implement the report's recommendations in accordance with the schedule contained in the report unless the schedule is disapproved by EPA within 15 calendar days of its submission.

Interim Limits

17. Until August 5, 2009, the District shall, at a minimum, comply with the interim effluent limitations set forth in Attachment No. I of this Order. The District shall also comply with all other effluent limitations, monitoring requirements and other conditions specified in the Permit for parameters not addressed in Attachment No. I.

Reporting

18. The District shall submit quarterly reports to EPA summarizing its compliance with the provisions of this Order. Progress reports shall be submitted on, or before, April 15th, July 15th, October 15th, and January 15th of each year. Each progress report submitted pursuant to this paragraph shall: a) describe activities undertaken during the reporting period directed at achieving compliance with this Order; b) identify all plans, reports, and other deliverables required by this Order that have been completed and submitted during the reporting period; and c) describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Order.

IV. Notification Procedures

1. Where this Order requires a specific action to be performed within a certain time frame,

the District shall submit a written notice of compliance or noncompliance with each deadline. Notification must be mailed within fourteen (14) days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.

2. If noncompliance is reported, notification should include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the District to comply with the elapsed schedule requirements;
 - c. A description of any factors that explain or mitigate the noncompliance; and,
 - d. An approximate date by which the District will perform the required action.
3. After a notification of noncompliance has been filed, compliance with the past requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
4. Submissions required by this Order shall be in writing and should be mailed to the following addresses:

USEPA - New England
Office of Environmental Stewardship
1 Congress Street
Suite 1100 (SEW)
Boston, MA 02114-2023
Attn: Linda Gray-Brolin


Massachusetts Department of Environmental Protection
Division of Watershed Management
627 Main Street
Worcester, MA 01608
Attn: Doug Fine, Deputy Regional Director
Attn: Bryant Firmin


V. General Provisions

1. The District may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the District. The District should read the above-cited regulations carefully before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the Clean Water Act provides that "effluent data" shall in all cases be made available to the public. See Section 308(b) of the Act, 33 U.S.C. § 1318(b).
2. This Order does not constitute a waiver or a modification of the terms and conditions of the Permit. The Permit remains in full force and effect. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.
3. This Order shall become effective upon the signature of both the Director of the Office of Environmental Stewardship and the Director of the Upper Blackstone Water Pollution Abatement District.

02/08/02
Date

2-26-02
Date


Thomas K. Walsh, Director
Upper Blackstone Water Pollution Abatement District.


Sam Silverman, Acting Director
Office of Environmental Stewardship

Upper Blackstone Water Pollution Abatement District Interim Limits

Parameter	Timeframe	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
BOD	November thru May	30	45	50	Daily	24hr. comp
CBOD	June thru October	See Permit	See Permit	See Permit	See Permit	See Permit
TSS	November thru May	30	45	50	Daily	24hr. comp
TSS	June thru October	See Permit	See Permit	See Permit	See Permit	See Permit
Ammonia	November thru April	14.5	See Permit	Report	3/Week	24hr. comp
	May	17.1	18.2	Report	3/Week	24hr. comp
	October & June	7.9	12.2	Report	3/Week	24hr. comp
	July thru September	5.9	6.5	Report	3/Week	24hr. comp
Phosphorus	April thru October	Report*	-----	Report	3/Week	24hr. comp
Phosphorus	November - March	See Permit	-----	See Permit	See Permit	See Permit
Copper	Year-round	0.022	-----	0.024	1/Week	24hr. comp
Zinc	Year-round	0.103	-----	0.11	1/Week	24hr. comp
* To be revised following completion of evaluations required by AO						
** All limits are specified in milligrams/liter (mg/l)						