



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

BY POUCH MAIL AND ELECTRONIC SUBMISSION

May 27, 2009

Eurika Durr, Clerk of the Board
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Upper Blackstone Water Pollution Abatement District
Region 1's Response to the Motion of the Upper Blackstone Water Pollution
Abatement District to Consolidate
NPDES Appeal No. 08-11
NPDES Permit No. MA 0102369

Dear Ms. Durr:

In connection with the above-referenced permit appeal, please find enclosed for docketing and review Region 1's Response to the Motion of the Upper Blackstone Water Pollution Abatement District to Consolidate, together with a certificate of service. Electronic copies of Region 1's submission will also be posted to the CDX filing system.

If you have any questions, please do not hesitate to contact me at 617-918-1711.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen McGuire", is written over the typed name.

Karen McGuire, Esq.
US EPA-Region 1

Enclosures

cc: Recipients Listed on Enclosed Certificate of Service

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

_____)	
In the Matter of:)	
)	
Upper Blackstone Water)	NPDES Appeal No. 08-11
Pollution Abatement District)	
)	
NPDES Permit No. MA 0102369)	
)	
_____)	

**REGION 1'S RESPONSE TO THE MOTION OF THE UPPER BLACKSTONE
WATER POLLUTION ABATEMENT DISTRICT TO CONSOLIDATE**

The Region objects to the motion of the Upper Blackstone Water Pollution Abatement District ("the District") to consolidate if it would result in a significant delay of resolution of the District's initial petition for review. As grounds for this response, the Region states as follows:

1. The Region reissued a final NPDES permit to the District on August 22, 2008. The District filed a Petition for Review of the Permit on September 15, 2008, which the Board docketed as NPDES Appeal No. 08-11. While the District's initial petition touches on numerous provisions of the permit, the heart of the District's appeal centers on the phosphorus and nitrogen limits. *See District's Supplemental Petition for Review* (Docket #'s 18-53). The nutrient limits are also the focal point of the filing by the Rhode Island Department of Environmental Management, as *amicus curiae*, and of petitions of the Massachusetts Department of Environmental Protection and the Conservation Law Foundation.

2. The discreet issue raised by Trout Unlimited in its petition for review is that the Region should have included an effluent limitation for aluminum in the permit since data indicate that the levels of aluminum currently discharged by the District are detrimental to fish populations in the Blackstone River. *See Trout Unlimited Petition* at

2. After review of Trout Unlimited's petition, the Region advised the Board that it intended to add an aluminum effluent limitation to that portion of the permit that had gone into effect. *See Region's Opposition* at n.1 and 135. The Region issued a final permit modification which included an aluminum limit on April 15, 2009.

3. The District filed a petition for review of the permit modification (i.e., the aluminum effluent limitation) on May 20, 2009. In its petition, the District also requested the Board to consolidate its challenge to the aluminum limit with the various arguments raised in the District's original petition for review.

4. The Region objects to consolidation to the extent it will result in a significant delay of the resolution of nutrient issues in this matter. Nutrient-related impairments in the Blackstone River and in upper Narragansett Bay are severe and undisputed. In the Blackstone River, impairments include growth of excessive aquatic vegetation, unpleasant odors and adverse impacts to the benthic community. In Narragansett Bay, ongoing adverse impacts include fish kills and a dramatic loss of eel grass. *See Region's Opposition* at 9. Further, other facilities in Massachusetts and Rhode Island already have final, comparable limits for nutrients and are moving forward with compliance schedules requiring design and construction of treatment. *Id.* at 25-26. The Region has expressed its intent to work with both Massachusetts and Rhode Island to ensure that all facilities in both states, including the District, are on the same approximate schedules. *Id.* at 71.

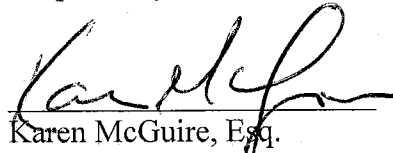
5. The Board's resolution of the issues raised in the District's two petitions are not dependent on one another. Even if the District is correct that there are common issues related to the selection of treatment for phosphorus and aluminum, issues related to cost and compliance are not relevant to whether the limits themselves are appropriate. *See U.S. Steel Corp. v. Train*, 556 F.2d 822, 838 (7th Cir. 1977). In addition, the Region anticipates that a compliance schedule for nutrients will involve a significant period of planning which, in turn, should allow ample time for resolution of the District's appeal of the aluminum limit.

Conclusion.

For the foregoing reasons, the Board should decline to consolidate the District's petitions if it would result in a significant delay of resolution of the District's original petition.¹

Dated: May 27, 2009

Respectfully submitted by EPA-Region 1,



Karen McGuire, Esq.

Amanda Helwig, Esq.

U.S. EPA Region 1

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¹ The District identified its Petition for Review of the permit modification with the same docket number the Board assigned to the District's initial Petition for Review filed on September 15, 2008 (i.e., NPDES 08-11). If the Board chooses not to consolidate the two petitions, the Region respectfully requests that they be assigned different docket numbers to avoid confusion.



CERTIFICATE OF SERVICE

I certify that a copy of Region 1's Response to the Motion of the Upper Blackstone Water Pollution Abatement District to Consolidate in connection NPDES Appeal No. 08-11 was sent to the following persons in the manner indicated:

By Pouch Mail and Electronic Submission:

U.S. Environmental Protection Agency
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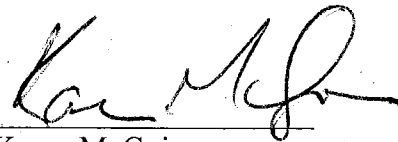
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Dated: May 27, 2009



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