



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

**VIA OVERNIGHT MAIL AND ELECTRONIC SUBMISSION**

December 31, 2008

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Colorado Building  
1341 G Street, NW  
Suite 600  
Washington, D.C. 20005

**Re: Upper Blackstone Water Pollution Abatement District  
Region 1's Opposition to Permittee's Motion for Leave to Reply  
NPDES Appeal Nos. 08-11, 08-12, 08-13, 08-14, 08-15, 08-16, 08-17, 08-18  
NPDES Permit No. MA 0102369**

Dear Ms. Durr:

In connection with the above-referenced permit appeals, please find enclosed for docketing Region 1's Opposition to the Motion of the Permittee for Leave to File a Reply. An electronic copy of Region 1's Opposition will be posted to the CDX filing system.

If you have any questions, please call me at 617-918-1711.

Sincerely,

  
Karen McGuire, Esq.  
US EPA-Region 1

Enclosures

cc: Recipients 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 )	
Pollution Abatement District )	NPDES Appeal Nos. 08-11, 08-12,
NPDES Permit No. MA 0102369 )	08-13, 08-14, 08-15, 08-16, 08-17,
_____ )	08-18

**REGION 1'S OPPOSITION TO UPPER BLACKSTONE WATER POLLUTION  
ABATEMENT DISTRICT'S MOTION FOR LEAVE TO FILE A REPLY BRIEF**

Region 1 objects to the Motion of the Permittee (the Upper Blackstone Water Pollution Abatement District) for Leave to Reply in this NPDES permit appeal. Through its request, the District seeks blanket authority to respond not only to the Region's Opposition to the District's Petition, but to all other petitions for review in this matter and to the brief filed by the Rhode Island Department of Environmental Management as *amicus curiae*. In light of the number of petitioners, overlapping arguments and voluminous pleadings already filed before the Board, granting the District's unbounded request is highly unlikely to narrow issues or to aid in the orderly disposition of this matter. Accordingly, the Region requests that the Board deny the District's motion. In the alternative, should the Board nonetheless determine that a reply brief be allowed, the Region requests that the Board place a reasonable page limitation on length and prohibit the District from supplementing its petition or the record with any new or refined arguments for review. The Region further requests the opportunity to submit a brief sur-reply.

**Background.**

The Region issued the District's final NPDES permit on August 22, 2008. Eight parties have filed petitions for review: the District (Appeal No. 08-11); the Massachusetts Department of Environmental Protection ("MassDEP") (No. 08-12); the Conservation Law Foundation (No. 08-13); Northern RI Chapter 737 Trout Unlimited (No. 08-14); Town of Holden, Massachusetts (No. 08-15); Town of Millbury, Massachusetts (No. 08-16); Cherry Valley Sewer District, Massachusetts (No. 08-17); and City of Worcester, Massachusetts (No. 08-17). In addition, the Rhode Island Department of Environmental Management (RIDEM) has requested leave to participate as *amicus curiae*.

The central dispute over the District's NPDES permit is whether the Region appropriately imposed numeric limits for phosphorus and nitrogen to address impairments to receiving waters in Massachusetts and downstream in Rhode Island. Three petitioners seek review of the effluent limitation for nitrogen: the District, MassDEP and the Conservation Law Foundation. RIDEM, as *amicus curiae*, seeks to present to the Board its views related to the nitrogen limit. Two petitioners, the District and the Conservation Law Foundation, also seek review of the phosphorus limit. The District and four municipal systems that send their effluent to the District's treatment plant (Holden, Millbury, Cherry Valley, Worcester) object to requirements in the permit making these municipal systems directly responsible for reporting sewer overflows and for operation and maintenance of their respective collection systems. Two petitioners, the District and Trout Unlimited, object to the Region's decision to include a monitoring requirement for aluminum in the permit. Finally, the District seeks review of a number

of other issues not raised by other petitioners, including issues related to other metal effluent limitations, various monitoring protocols and the timing of reporting, the expression of ammonia limits in both mass and concentration, and the absence of a compliance schedule in the permit.

Six of the eight petitions were filed on or before the original due date of October 24, 2008. By order dated September 23, 2008, the Board granted requests of the District and MassDEP a two-week extension (up to and including December 8, 2008) to supplement their respective petitions for review. On December 18, 2008, RIDEM filed its motion to participate as *amicus curiae*.

**Argument.**

Petitioners in NPDES permit appeals before the Board are not permitted to file reply briefs as of right. *See In re Town of Seabrook, N.H.*, 4 E.A.D. 806, 810 n.6 (EAB 1993). *See also EPA Environmental Appeals Board Practice Manual* at 36 (noting that only “on occasion” is leave granted to file a reply brief). Indeed, petitioners have the obligation of presenting arguments with sufficient precision and adequate supporting documentation in their original petitions. *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 496, 520 (EAB 2002); *In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 5 (EAB 2000). As the District’s broad request is not crafted to focus issues on appeal or to otherwise facilitate the orderly disposition of this matter, it should be denied.

In support of its request, the District asserts three very general arguments. First, it claims that since many of the petitions were filed “roughly concurrent with the Permittee’s petition,” it should be permitted to reply to any of the arguments raised in those petitions or in the Region’s responses. *See Motion of the Permittee for Leave to*

*Reply* at 1-2. Second, the District contends that it should be permitted to respond to unspecified arguments by the Region and others that it claims are “untimely” or based on “untoward motives.” *Id.* at 2. Finally, the District argues that a reply is necessary to correct unspecified “misstatements of fact and law” and to correct “mischaracterizations” of the arguments presented in its petition. *Id.*

The District cannot avail itself of the claim that it should be afforded more time to respond to petitions submitted by other parties as they were filed “roughly concurrent” with the District’s petition. As noted above, the Board granted the District an additional two weeks to file its “supplemental” petition for review. Accordingly, the District had the opportunity to review those petitions already filed (such as those by the Conservation Law Foundation and Trout Unlimited) as it crafted the arguments in support of its own petition for review. Nor does the District explain why it would aid the Board’s review for the District to “reply” to petitions filed by MassDEP or the four municipal “co-permittees” which largely support the District’s views.

With regard to the District’s claims that it should be allowed unfettered discretion to respond to unspecified claims that its arguments are “untimely” or based on “improper motives,” it is impossible for the Board to assess whether such additional briefing would be useful absent the District’s articulation of the specific issues to which it seeks leave to reply. Similarly, the District’s vague assertions that it needs to correct “misstatements of fact and law” and “mischaracterizations” of its positions provides insufficient basis for its request for leave to reply. Indeed, by failing to articulate with reasonable precision the issues it seeks to address, the District opens to the door to raise new issues or to revisit and reframe the arguments presented in its initial filings.

As the District's motion for leave to file additional briefing lacks adequate basis and is overbroad, it should be denied. However, if the Board determines that a reply brief should be allowed, Region 1 requests that the Board place reasonable page limitations on length and prohibit the District from briefing any new arguments or issues not raised in its original or supplemental petitions. With regard to length, the District itself represents that it seeks only to submit a "short reply." *See Motion* at 3. The Region accordingly suggests a limit of 20-25 pages. Should the Board permit the District to file a reply brief, the Region also requests that the Board permit the Region to submit a sur-reply limited to addressing issues raised by the District's reply brief and also subject to appropriate page limits. Finally, with reference to timing of the submittals, the Region objects to the District's suggestion that it be allowed 30 days from the date of the Board's order to craft its reply brief. A more expedited schedule will encourage all parties to focus on key issues. Accordingly, the Region requests that the District's reply be submitted within two weeks of the date of the Board's order and any sur-reply from the Region submitted within 30 days of the Board's order. To facilitate this schedule, the Region requests that any scheduling order also direct the parties to serve filings by email in addition to mail.

Dated: December 31, 2008

Respectfully submitted by EPA-Region 1,



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## CERTIFICATE OF SERVICE

I certify that copies of Region 1's Opposition to Upper Blackstone Water Pollution Abatement District's Motion for Leave to File a Reply in connection NPDES Appeal Nos. 08-11, 08-12, 08-13, 08-14, 08-15, 08-16, 08-17, 08-18, were sent to the following persons in the manner indicated:

By Electronic Submission and Overnight Mail:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
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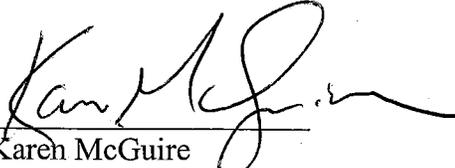
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Dated: December 31, 2008



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