



Date:
December 27, 2005

**U.S. Environmental Protection Agency
Office of Regional Counsel
One Congress Street, Suite 1100
Boston, MA 02114-2023
Phone: (617) 918-1148
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PLEASE DELIVER TO:

**Eurika Durr
Clerk, EPA Environmental Appeals Board
(202) 233-0121**

**From: Samir Bukhari
Attorney, Office of Regional Counsel
EPA, Region 1**

Number of Pages to Follow: 6

Re: Status Report

**City of Marlborough Westerly Wastewater Treatment Facility
Appeal Nos. NPDES 05-05 and 05-09
Town of Westborough Wastewater Treatment Plant
Appeal Nos. NPDES 05-07 and 05-08**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CEP
U.S. EPA

2005 DEC 27 PM 2:56

11/11/05 FAXES TO: PP

December 27, 2005

VIA FAX AND EXPRESS MAIL

U.S. Environmental Protection Agency
Attn: Eureka Durr
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Status Report

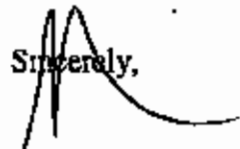
**City of Marlborough Westerly Wastewater Treatment Facility
Appeal Nos. NPDES 05-05 and 05-09
Town of Westborough Wastewater Treatment Plant
Appeal Nos. NPDES 05-07 and 05-08**

Dear Ms. Durr:

Enclosed are four (4) originals and five (5) copies of a Status Report submitted by EPA-New England Region in the above-referenced NPDES permit appeals.

If you should have any questions, please do not hesitate to contact me at 617-918-1095.

Sincerely,


Samir Bukhari
Attorney Advisor
Office of Regional Counsel
US EPA-Region 1

Enclosure

cc: Joseph M. Hamilton, Esq., Town of Westborough
Donald Anglehart, Esq., City of Marlborough
Kenneth L. Kimmell, Esq., Organization for the Assabet River
Roger Janson, EPA-Region 1
Carl Dierker, EPA-Region 1
Ann Williams, EPA-Region 1

BEFORE THE ENVIRONMENTAL APPEALS BOARD**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN RE)
)
 City of Marlborough Westerly Wastewater)
 Treatment Facility)
 NPDES No. MA0100480)
 Appeal Nos. NPDES 05-05 and 05-09)
)
 Town of Westborough Wastewater)
 Treatment Plant)
 NPDES No. MA0100412)
 Appeal Nos. NPDES 05-07 and 05-08)
)
)

STATUS REPORT ON MEDIATION AND PERMIT MODIFICATION PROCEEDINGS

The United States Environmental Protection Agency, New England Region ("Region") respectfully submits this status report with respect to the above-captioned matters.

In re Town of Westborough Wastewater Treatment Plant

The Town of Westborough and the Organization for the Assabet River ("OAR") have informed the Region that notices of voluntary dismissal of their respective petitions for review of NPDES Permit No. MA0100412 have been filed with the Environmental Appeals Board ("Board"). Upon receipt of orders from the Board dismissing the appeals, the Region will put the stayed portions of the permit into effect.

In re City of Marlborough Westerly Wastewater Treatment Facility

The Region prepared and had intended to issue a draft permit modification of NPDES Permit No. MA0100480 ("Westerly Permit") to the City of Marlborough ("Marlborough") on December 15, 2005. On December 12, 2005, the Massachusetts Department of Environmental Protection ("DEP") informed the Region that it had had very encouraging discussions with Marlborough regarding a specific proposal that would

resolve the instant appeals and that would avoid future litigation over the remanded Marlborough Easterly Wastewater Treatment Facility permit ("Easterly Permit"). See City of Marlborough Easterly Wastewater Treatment Facility, 12 E.A.D. ___, NPDES Appeal No. 04-13 (August 11, 2005). Since being informed of the settlement talks, the leadership and staff of the Region and DEP have been vigorously attempting to coordinate the litigation positions of Marlborough and OAR to retain the possibility of a mutual withdrawal of the Westerly Permit appeals and to forge consensus with Marlborough and Town of Sudbury over the terms of the modified Easterly Permit.

Marlborough has indicated that it intends to distribute a proposal for resolving the Westerly Permit appeals this week for OAR's review and comment. It is the Region's understanding that the proposal will not disturb the terms of the existing Westerly Permit, but will, in part, seek to outline a plan for collaboratively developing a flow trading scheme with other dischargers on the Assabet River that have unused flow capacity. If it becomes apparent that no settlement will result, the Region will proceed with the Westerly Permit modification as soon as possible. It is worth noting that Marlborough's decision making process, and the Region's consultations with the city, have been complicated by the fact that the city government is in transition and that the mayor-elect will not take office until January 3, 2006.

The Region is cognizant of the internal milestones for the permit modification process set forth in the Board's November 22, 2005 Order Staying Proceedings ("Stay Order"), and is departing from them with great reluctance. The Region is, in addition, aware of the challenges to resolution of the Westerly Permit appeal, including a decision by OAR's Board of Directors on December 21, 2005 to terminate its offer to withdraw and proceed with litigation. The Region understands the rationale behind OAR's decision, but strongly believes that settlement of the permit appeals is the preferred outcome and that conditions necessary for settling the dispute are unlikely to obtain after the modification process begins. The Region weighs the current prospects for settling the matter against the near certainty of protracted litigation, the result of which will very likely be to delay the construction of the upgraded Marlborough treatment facility for years and to delay the attendant environmental benefit to the Assabet River for years, an outcome which benefits no party. The Region will make best efforts, including to the

extent practicable shortening the time allotted it to prepare its response to comments, in order to ensure that the modification process is completed as close to April 1, 2006 as possible.

In accordance with the Stay Order, the Region will provide the Board with another status report on the progress of mediation and the permit modification process by January 13, 2006.

Respectfully Submitted,

U.S. Environmental Protection Agency
New England Region

By its Counsel,
Samir Bukhari
Attorney Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (RAA)
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Dated: December 27, 2005