

EXHIBITS  
In Support of Region 1's Opposition to Petitions for Review  
(NPDES Appeal Nos. 10-09 to 10-12)

EXHIBIT	DESCRIPTION OF DOCUMENT
1	Determination on Remand (July 7, 2010)
2	District's Initial Petition for Review (September 15, 2008)
3	Final Permit (August 22, 2008) (Part II Standard Conditions and Attachments omitted)
4	Region's Response to Comments (August 22, 2008) (excerpts)
5	District's Supplemental Petition for Review (October 8, 2008) (excerpts)
6	Infiltration and Inflow Policy BRP01-1, MassDEP (September 6, 2001)
7	Email from Angelo Liberti (RIDEM) to Damien Houlihan (Region 1) (June 15, 2010)

## **EXHIBIT 1**

**U.S. EPA REGION 1**

**Determination on Remand from the EPA  
Environmental Appeals Board**

**Upper Blackstone Water Pollution Abatement District  
NPDES Permit No. MA01022369**

**United States Environmental Protection Agency  
Region 1 – New England Office  
Office of Ecosystem Protection  
5 Post Office Square, Suite 100  
Boston, MA 02109**



**Determination on Remand from the EPA Environmental Appeals Board  
Upper Blackstone Water Pollution Abatement District  
NPDES Permit No. MA0102369**

**I. Introduction.**

On August 22, 2008, the U.S. Environmental Protection Agency Region 1 (the Region) reissued National Pollution Discharge Elimination System (NPDES) permit number MA0102369 (the Permit) to the Upper Blackstone Water Pollution Abatement District (the District). The District owns and operates a wastewater treatment plant located in Millbury, Massachusetts, which collects and treats sewage and wastewater from several communities in central Massachusetts. The District's treatment plant discharges to the Blackstone River, an interstate freshwater river flowing from its origin in Massachusetts south into Rhode Island and ultimately to Narragansett Bay, a marine water.

The Region issued the Permit under the federal Clean Water Act, 33 U.S.C. § 1251, *et seq.* Among other requirements, the Permit includes effluent limitations for phosphorus and nitrogen to address severe, nutrient-driven impairments in the Blackstone River and upper Narragansett Bay. *See Permit*, Part I.A.1. The Permit's nutrient limits include monthly average effluent limitations during the growing season of 5.0 mg/l total nitrogen and 0.1 mg/l total phosphorus. In addition, the Permit also includes provisions making certain communities who send their waste to the District's treatment facility (the satellite collection systems) responsible for requirements to report unauthorized sanitary sewer overflows and to properly operate and maintain their respective collection systems, including to develop and implement plans to reduce excessive inflow and infiltration (I/I). *See Permit* at p.1 and Parts I.D and E.

Eight parties filed petitions for review before EPA's Environmental Appeals Board (the Board), including the District and four of the satellite collection systems. On November 26, 2008, the Region provided notice to petitioners that the contested conditions were stayed pending the appeals and final agency action, but that the uncontested and severable portions of the Permit were in effect. *See Ex. A.* On May 28, 2010, the Board issued a decision on the appeals. *See In re Upper Blackstone Water Pollution Abatement District*, NPDES Appeal Nos. 08-11 to 08-18 & 09-06, 14 E.A.D. \_\_ (Order Denying Review in Part and Remanding in Part, EAB, May 28, 2010).<sup>1</sup> The Board denied review of the Permit and upheld the Region's analyses in all respects except one: the Board remanded to the Region the Permit's provision adding the satellite collection systems as co-permittees for further consideration.

In its directions on remand, the Board held that the Region may re-issue the Permit with or without the co-permittee provision as the Region determines is appropriate. *See Board's Order* at pp.19-20. Should the Region choose to maintain the co-permittee provision in the Permit, the Board further instructed that the Region provide a more

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<sup>1</sup> The decision is available on the Board's website via the following link:  
[http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/34E841C87F346D94852577360068976F/\\$File/Denying%20Review....pdf](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/34E841C87F346D94852577360068976F/$File/Denying%20Review....pdf)



comprehensive factual and legal rationale for its decision to regulate the satellite collection systems. *Id.* at 20.

As is detailed more fully below, the Region has determined on remand to remove the co-permittee provision from the Permit as we believe it is imperative to implement the new, more stringent nutrient limits as soon as possible. Under the specific circumstances here, including the severe nutrient-related impairments in the receiving waters and the extent of the District's ongoing contribution to those impairments, an expeditious resolution of the remand and final permit decision is warranted. The Region will fully respond to the Board's concerns in any future issuance or modification of the District's permit that includes regulation of satellite collection systems (or in a permit issuance to another POTW should the issues be raised there first).<sup>2</sup>

## **II. Actions and Determinations to Resolve Remanded Issues.**

Factors supporting removal of the co-permittee provision include the following:

- The Region anticipates it will take a significant amount of time to develop a comprehensive response to the factual and legal questions posed by the Board and to coordinate broadly within EPA in developing that response.
- In the meantime, it is undisputed that the receiving waters are severely impaired. Nitrogen-driven impairments in the Narragansett Bay include dramatic decline in dissolved oxygen levels, significant fish kills and loss of historic eel grass habitat. *See* Board's Order at 26-27; Response to Comments (RTC) at 29, 96. Phosphorus-driven impairments in the Blackstone River include low dissolved oxygen, high levels of chlorophyll *a*, and high levels of macrophyte and periphyton growth. *See, e.g.*, Board's Order at 73; Fact Sheet at 8 (listing reports documenting adverse impacts).
- The District's discharges of nitrogen and phosphorus are a major contributor to impairments in the receiving waters. The District's discharges dominate the Blackstone River's flows, *see* Board's Order at 74, and the facility is the dominant source of nitrogen loadings to the Blackstone River. *Id.* at 30-31; RTC at 27, 32. The District is also the dominant source of bio-available phosphorus loadings to the Blackstone River under critical low flow conditions. RTC at 40, 41.
- Although the Board has affirmed the Region's finding that limits of 5.0 mg/l total nitrogen and 0.1 mg/l total phosphorus are necessary to ensure applicable water quality standards will be met, these limits are stayed until final resolution of the remand. *See* 40 C.F.R. §§ 124.16(a) and 124.19(f)(1)(iii). Therefore, until final agency action on this Permit, the District will continue to discharge nitrogen and phosphorus at concentrations that are causing or contributing to violations of water quality standards in the receiving waters.

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<sup>2</sup> There are many other POTWs with separately owned satellite collection systems in Massachusetts and New Hampshire, states in which the Region has responsibility to issue NPDES permits.



- The delay that would be associated with resolving the co-permittee issue is in direct conflict with the need to swiftly reduce the level of nutrient loading into receiving waters to address the severe existing nutrient impairments in Narragansett Bay. It is untenable to forestall necessary reductions in the pollutants that are the primary cause of the water quality impairments while reconsideration of issues surrounding the regulation of satellite municipal collection systems undergoes potentially extended assessment by the Agency. Moreover, due to the tendency of nutrients to recycle once released into the system and contribute to future impairment, delay in addressing point source nutrient contributions will only compound the challenges in restoring the receiving waters. In other words, the cycle of eutrophication can be difficult to reverse due to the tendency of nutrients to be retained in sediments, potentially resulting in a long recovery period even after pollutant sources have been reduced. *See, e.g., Nutrient Technical Guidance Manual: Rivers and Streams (US EPA 2000)* at 3; RTC at n.12 and 117. Thus, efforts by the District to initiate planning, design and construction of additional facilities needed to achieve the new limits should begin as soon as possible, as should achievement of these limits.<sup>3</sup>
- Additionally, all other significant point sources contributing nutrients to the Bay already have final permits including stringent nitrogen limits. These include two other facilities in Massachusetts and seven facilities in Rhode Island. The Region's intent is to work with both Rhode Island and Massachusetts to ensure all these facilities meet their respective nitrogen limits in comparable schedules in order to best assess improvement to water quality. *See* RTC at 58. Further, the Rhode Island Department of Environmental Management, upon review of the Board's Order, has requested that the Region move forward as expeditiously as possible to place the nutrient limits into effect to address the significant water quality impairments to waters in that state. Thus, both equitable considerations and water quality assessment factors weigh in favor of moving forward at this time.

### III. Conclusion.

For the reasons above, the Region has after due consideration on remand determined to forego imposition of any co-permittee requirements in the Permit. Although the Region considered all the factors above together in making its decision, the Region believes that each (i.e., water quality considerations, delay to date in putting new nutrient limits in effect, equitable concerns, and the views of the downstream affected state), would independently support a decision to move forward at this time.<sup>4</sup>

<sup>3</sup> Because the District is not anticipated to consistently comply with the new nutrient limits immediately upon final issuance of the Permit, the Region will establish a schedule for the District to design and construct needed treatment facilities in a separate administrative order. *See* RTC at 90.

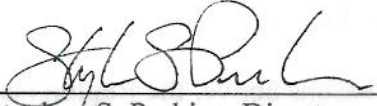
<sup>4</sup> The Region has further determined not to exercise its discretion under 40 C.F.R. §124.14 to reopen the record for additional public comment on the determination to issue the permit decision without the remanded co-permittee provision. *See In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 584-85 (EAB 1998) (applying provisions of 40 C.F.R. § 124.14 related to reopening a public comment period in the context of a



Exhibit B, attached hereto, is a Notice of Conforming Changes, which reflects the Region's remand decision to forego imposition of any co-permittee requirements in the Permit. More specifically, and as is reflected in Exhibit B, the Region has removed all requirements that the satellite collection systems implement Parts I.D (Unauthorized Overflows) and I.E (Operation and Maintenance). In addition, as the requirements related to development and implementation of a plan to control inflow/infiltration (Part I.E.3) were initially crafted to apply to both the District (as owner of the treatment plant) and the co-permittees (as owners of the collection systems), the Region has on remand clarified which aspects of plan development, implementation and associated reporting requirements apply only to the extent the District owns any portions of the separate sewer system. These include requirements to identify and physically remove sources of inflow and infiltration to the separate sewer system. The Region has not included a similar caveat for requirements imposed on the District as the owner of the treatment facilities. These include provisions that the District is responsible to ensure that high flows do not cause I/I related effluent violations and that the District require, through appropriate agreements, that all member communities control discharges sufficient to ensure that high flows do not cause or contribute to a violation of effluent limitations or cause overflows from the District's facilities. These requirements remain unchanged as they were drawn from state policy applicable to regional treatment facilities,<sup>5</sup> were not challenged by any petitioner, and were not the subject of the Board's remand.

Appeals of the Region's decision to forego imposition of the co-permittee requirements may be filed with the Board within 30 days of the date of receipt of this Determination on Remand. See 40 C.F.R. §124.19(a). If no appeal of the Region's remand decision is filed with the Board by this date, the current stay of the Permit's contested conditions will be lifted and these conditions shall become effective upon the Regional Administrator's issuance of a final permit decision. If such an appeal before the Board is filed, those currently stayed conditions will remain stayed until final agency action and appropriate notification occur.

Date: July 7, 2010

  
Stephen S. Perkins, Director  
Office of Ecosystem Protection  
USEPA – Region 1

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remand proceeding), *aff'd*, *Penn Fuel Gas, Inc. v. EPA*, 185 F.3d 862 (3rd Cir. 1999). The questions raised by the Region's analysis on remand are neither substantial nor new in the context of this permit proceeding.

<sup>5</sup> Interim Infiltration and Inflow Policy, Massachusetts Department of Environmental Protection, Bureau of Resource Protection (Policy No. BRP01-1, September 6, 2001).

Ex. A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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

**VIA OVERNIGHT MAIL AND ELECTRONIC SUBMISSION**

November 26, 2008

Ms. Eureka Durr  
Clerk of the Board  
U.S. EPA Environmental Appeals Board (MC 1103B)  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

Thomas K. Walsh, Director  
Upper Blackstone Water Pollution Abatement District  
50 Route 20  
Millbury, MA 01527

**Re: Upper Blackstone Water Pollution Abatement District  
Notice of Uncontested and Severable Conditions  
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 and Mr. Walsh:

The Upper Blackstone Water Pollution Abatement District ("District"), Massachusetts Department of Environmental Protection ("MassDEP"), Conservation Law Foundation, Northern RI Chapter 737 Trout Unlimited, Town of Holden, Town of Millbury, Cherry Valley Sewer District, and City of Worcester (collectively "Petitioners") timely petitioned the U.S. Environmental Protection Agency ("EPA") Environmental Appeals Board ("Board") for review of NPDES Permit No. MA 0102369 ("Permit") between September 15, 2008 and September 24, 2008. Region 1 of the EPA issued the Permit on August 22, 2008.

Pursuant to 40 C.F.R. § 124.19, the Petitioners seek review of the Permit's: (i) imposition of requirements of Parts D and E on the District and other co-permittees, including the timing for submittal of the Inflow/Infiltration Plan (*see* Permit at page 1 and Parts D and E), (ii) fecal coliform effluent limits, applied seasonally from November 1 through March 31 (*id.* at I.A.1 and footnote 6); (iii) ammonia nitrogen effluent limits, applied year round (*id.* at I.A.1); (iv) total nitrogen effluent limits (*id.*), including cold weather denitrification requirements (*id.* at footnote 9); (v) total phosphorous effluent limits (*id.* at I.A.1); (vi) total aluminum, lead, and nickel monitoring and reporting requirements (*id.*); (vii) total

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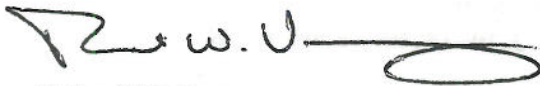


copper and cadmium effluent limits (*id.*); (viii) sampling protocol for fecal coliform effluent limits when outfall 001A is active (*id.* at footnote 5); and (ix) sampling schedule for whole effluent toxicity (*id.* at I.A.1 and footnote 13).

The limits and conditions contested by the Petitioners are referred to herein as the "Contested Conditions." Pursuant to 40 C.F.R. §§ 124.16(a)(2)(ii) and 124.60(b), this letter notifies you of my determination that the Contested Conditions are stayed during the pendency of this appeal and until final agency action under 40 C.F.R. § 124.19(f). Also stayed are the effluent limitations associated with the sampling protocols challenged in (viii) and (ix) above – i.e., fecal coliform effluent limitations at outfall 001A (Permit at I.A.1) and effluent limitations for WET (*Id.*). Please note that the Permit's effluent limitations for fecal coliform at outfall 001 are not stayed. With respect to each of the Contested Conditions, the corresponding term, if any, in the District's prior permit issued September 30, 1999, shall remain in effect. In addition, WET effluent limitations in the prior permit shall remain in effect. All other conditions of the Permit are uncontested and severable from the Contested Conditions. Thus, all of the other conditions will become fully effective enforceable obligations of the Permit on January 1, 2009 consistent with 40 C.F.R. § 124.16(a)(2)(i).

If you have any questions regarding this correspondence, please feel free to contact Karen McGuire, the Region's counsel in this matter, at 617-918-1711.

Sincerely,



Robert W. Varney  
Regional Administrator

cc: Robert L. Moylan Jr., Commissioner, Dept. of Public Works and Parks, Worcester  
James Shuris, Director of Public Works, Town of Holden  
J. Bradford Lange, Sewer Commission, Town of Millbury  
Donald G. Manseau, Cherry Valley Sewer District  
Town of Auburn, Board of Selectmen  
Town of Rutland, Board of Selectmen  
Town of West Boylston, Board of Selectmen  
David M. Moore, City Solicitor, Worcester  
Roland C. Gauvin, Northern RI Chapter 737, Trout Unlimited  
Nathan A. Stokes, Esq., Barnes & Thornburg  
Ned Bartlett, Esq., Bowditch & Dewey  
David Mears, Esq., Vermont Law School  
Christopher Kilian, Esq., Conservation Law Foundation  
Karen L. Crocker, Counsel, MassDEP

**Ex. B**

**NPDES Permit No. MA 0102369**

**Page 1 of 4**

**Notice of Changes Conforming to the Board's Order on Remand and the  
Region's Determination on Remand**

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. § 1251 et seq.; the "CWA"),

**Upper Blackstone Water Pollution Abatement District (UBWPAD)**

is authorized to discharge from the facility located at:

**Upper Blackstone Water Pollution Abatement District  
50 Route 20  
Millbury, MA 01527**

to receiving water named: **Blackstone River**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The City of Worcester, the Towns of Millbury, Auburn, Holden, West Boylston, Rutland, Sutton, Shrewsbury, Oxford and Paxton, and the Cherry Valley Sewer District are authorized to discharge wastewater to the UBWPAD facility. Only municipalities specifically listed above are authorized to discharge wastewater into the UBWPAD facility. This permit does not restrict UBWPAD from accepting sludge or septage from other entities.

. . . .

**D. UNAUTHORIZED DISCHARGES**

The permittee is 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. of this permit. Discharges of wastewater to waters of the United States from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit and shall be reported to the Chief of the Water Technical Unit, or his/her designee, in accordance with Section D.1.e. (1) of the General Requirements of this permit (Twenty-four hour reporting).

Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes DEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <http://www.mass.gov/dep/water/approvals/surffms.htm#sso>.



Ex. B

NPDES Permit No. MA 0102369

Page 2 of 4

## E. OPERATION AND MAINTENANCE OF THE SEWER SYSTEM

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the following terms and conditions:

### 1. Maintenance Staff

The permittee shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit.

### 2. Preventative Maintenance Program

The permittee shall maintain an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges.

### 3. Infiltration/Inflow Control Plan:

The permittee shall develop and implement a plan to control infiltration and inflow (I/I) to the separate sewer system. The plan shall be submitted to EPA and MassDEP **within six months of the effective date of this permit** (see page 1 of this permit for the effective date) and shall describe the permittee's program for preventing I/I related effluent limit violations, and all unauthorized discharges of wastewater, including overflows and by-passes due to excessive I/I. The permittee is responsible to ensure that high flows do not cause I/I related effluent limit violations.

The plan shall include, but only to the extent the permittee owns the separate sewer system:

- An ongoing program to identify and remove sources of I/I. The program shall include the necessary funding level and the source(s) of funding.

**Ex. B**

**NPDES Permit No. MA 0102369**

**Page 3 of 4**

- An inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts. Priority should be given to removal of public and private inflow sources that are upstream from, and potentially contribute to, known areas of sewer system backups and/or overflows
- Identification and prioritization of areas that will provide increased aquifer recharge as the result of reduction/elimination of I/I to the system.
- An educational public outreach program for all aspects of I/I control, particularly private inflow.

The plan shall also include:

- The permittee shall require, through appropriate agreements, 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 limitations or cause overflows from the permittee's collection system.

**Reporting Requirements:**

A summary report of all actions taken to minimize I/I during the previous calendar year shall be submitted to EPA and MassDEP annually, **by March 31**. The summary report shall, at a minimum, include:

- A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous calendar year, but only to the extent the permittee owns the separate sewer system.
- Expenditures for any I/I related maintenance activities and corrective actions taken during the previous year, but only to the extent the permittee owns the separate sewer system.
- A map with areas identified for I/I-related investigation/action in the coming year, but only to the extent the permittee owns the separate sewer system.
- A calculation of the annual average I/I and the maximum month I/I for the reporting year.



**Ex. B**

**NPDES Permit No. MA 0102369**

**Page 4 of 4**

- A report of any I/I related corrective actions taken as a result of unauthorized discharges reported pursuant to 314 CMR 3.19(20) and reported pursuant to the Unauthorized Discharges section of this permit, but only to the extent the permittee owns the separate sewer system.

**4. Alternate Power Source**

In order to maintain compliance with the terms and conditions of this permit, the permittee shall continue to provide an alternative power source with which to sufficiently operate its treatment works (as defined at 40 CFR §122.2).

Ex. B

NPDES Permit No. MA 0102369

Page 1 of 4

Notice of Changes Conforming to the Board's Order on Remand and the  
Region's Determination on Remand

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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50 Route 20  
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to receiving water named: **Blackstone River**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The City of Worcester, the Towns of Millbury, Auburn, Holden, West Boylston, Rutland, Sutton, Shrewsbury, Oxford and Paxton, and the Cherry Valley Sewer District ~~discharge wastewater into the UBWPAD facility and are co-permittees for Part D and Part E and are responsible for implementation of the operation and maintenance and reporting requirements of Parts D and E related to their respective system. The Towns of Sutton, Shrewsbury, Oxford and Paxton are also authorized to discharge wastewater to the UBWPAD facility. Only municipalities specifically listed above are authorized to discharge wastewater into the UBWPAD facility. This permit does not restrict UBWPAD from accepting sludge or septage from other entities.~~

....

**D. UNAUTHORIZED DISCHARGES**

The permittee ~~and co-permittees are~~ is 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. of this permit. Discharges of wastewater to waters of the United States from any other point sources, including sanitary sewer overflows (SSOs), are not authorized by this permit and shall be reported to the Chief of the Water Technical Unit, or his/her designee, in accordance with Section D.1.e. (1) of the General Requirements of this permit (Twenty-four hour reporting).



Notification of SSOs to MassDEP shall be made on its SSO Reporting Form (which includes DEP Regional Office telephone numbers). The reporting form and instruction for its completion may be found on-line at <http://www.mass.gov/dep/water/approvals/surffms.htm#sso>.

## E. OPERATION AND MAINTENANCE OF THE SEWER SYSTEM

Operation and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the following terms and conditions:

### 1. Maintenance Staff

The permittee shall provide an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit.

### 2. Preventative Maintenance Program

The permittee shall maintain an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure. The program shall include an inspection program designed to identify all potential and actual unauthorized discharges.

### 3. Infiltration/Inflow Control Plan:

The permittee ~~and each co-permittee~~ shall develop and implement a plan to control infiltration and inflow (I/I) to the separate sewer system. The plan shall be submitted to EPA and MassDEP **within six months of the effective date of this permit** (see page 1 of this permit for the effective date) and shall describe the permittee's ~~and co-permittee's~~ program for preventing I/I related effluent limit violations, and all unauthorized discharges of wastewater, including overflows and by-passes due to excessive I/I. ~~Both T~~the permittee is ~~and co-permittees are~~ responsible to ensure that high flows do not cause I/I related effluent limit violations.

The plan shall include, but only to the extent the permittee owns the separate sewer system:

- An ongoing program to identify and remove sources of I/I. The program shall include the necessary funding level and the source(s) of funding.
- An inflow identification and control program that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts. Priority should be given to removal of public and private inflow sources that are upstream from, and potentially contribute to, known areas of sewer system backups and/or overflows
- Identification and prioritization of areas that will provide increased aquifer recharge as the result of reduction/elimination of I/I to the system.

- An educational public outreach program for all aspects of I/I control, particularly private inflow.

The plan shall also include:

- The permittee shall require, through appropriate agreements, 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 limitations or cause overflows from the permittee's collection system.

#### Reporting Requirements:

A summary report of all actions taken to minimize I/I during the previous calendar year shall be submitted to EPA and MassDEP annually, **by March 31**. The summary report shall, at a minimum, include:

- A map and a description of inspection and maintenance activities conducted and corrective actions taken during the previous calendar year, but only to the extent the permittee owns the separate sewer system.
- Expenditures for any I/I related maintenance activities and corrective actions taken during the previous year, but only to the extent the permittee owns the separate sewer system.
- A map with areas identified for I/I-related investigation/action in the coming year, but only to the extent the permittee owns the separate sewer system.
- A calculation of the annual average I/I and the maximum month I/I for the reporting year.
- A report of any I/I related corrective actions taken as a result of unauthorized discharges reported pursuant to 314 CMR 3.19(20) and reported pursuant to the Unauthorized Discharges section of this permit, but only to the extent the permittee owns the separate sewer system.

#### 4. Alternate Power Source



| In order to maintain compliance with the terms and conditions of this permit, the  
| permittee ~~and co-permittees~~ shall continue to provide an alternative power source  
| with which to sufficiently operate its treatment works (as defined at 40 CFR  
§122.2).

## **EXHIBIT 2**



RECEIVED  
U.S. E.P.A.

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON 3 32  
WASHINGTON, D.C.**

ENV. APPEALS BOARD

In re:

UPPER BLACKSTONE WATER  
POLLUTION ABATEMENT DISTRICT,  
MILLBURY, MASSACHUSETTS

NPDES Permit No. MA0102369

NPDES Appeal No. 08-\_\_\_\_\_

**INITIAL PETITION FOR REVIEW**

**I. Introduction**

The Upper Blackstone Water Pollution Abatement District (the "District") submits this initial petition for review (the "Initial Petition") of certain conditions in the final National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0102369 (the "Permit") issued by the United States Environmental Protection Agency ("EPA"), Region 1 ("Region 1") on August 22, 2008, pursuant to 40 C.F.R. §124.19(a). Filed simultaneously with this Initial Petition is a Joint Scheduling Motion seeking additional time for the District to prepare a more substantive Petition, and for Region 1 to prepare its response.

This Initial Petition is designed to identify for the Environmental Appeals Board ("EAB"), and Region 1, those contested terms and conditions of the Permit concerning which the District seeks review. As outlined below, the new Permit contains numerous terms and provisions based on clearly erroneous conclusions of fact or law that the District specifically identified in its public comments, but which Region 1 failed to rationally address. In addition, the analysis that Region 1 conducted, which provide the foundation for many of the appealed permit provisions, fails to duly consider the data and public comments or to draw rational

conclusions from that data or those comments. Finally, the Initial Petition identifies issues that involve an exercise of discretion or an important policy consideration that the EAB should, in its discretion, address.

## **II. Background**

The District owns and operates its facility located in Millbury, Massachusetts which discharges to the Blackstone River. The District is currently operating under a Permit issued on September 30, 1999, as modified by a settlement agreement dated December 19, 2001 (the "2001 Permit"). In accordance with the settlement agreement, an administrative consent order (the "Consent Order") issued in 2002 with 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.

On November 8, 2005, the District submitted an updated renewal application to Region 1. On March 23, 2007, Region 1 issued a draft NPDES permit. The District and many others submitted comments on the draft NPDES permit within the public comment period, which concluded on May 25, 2007. On August 22, 2008, Region 1 issued the Permit, along with a Response to Comments document consisting of approximately 122 single spaced pages, not including charts and exhibits, all of which was received by the District by certified mail on August 25, 2008.

The District contests, among other issues, the provisions of the Permit which set or include:

- (1) The total phosphorus limits;
- (2) The total nitrogen limits;
- (3) Year round disinfection requirements;



- (4) "Co-permittees" who were never previously identified as "permittees"; and
- (5) Other terms and provisions described herein.

The Permit's provisions, which have an effective date of October 1, 2008, conflict with the existing, enforceable compliance schedule established under the settlement agreement Consent Order signed by Region 1 and 2001 Permit. In 2001 Permit and Consent Order called for a discharge limit for phosphorus of 0.75 mg/L in summer, with no limit on total nitrogen. Based upon these standards, the District committed to upgrade its facility at a significant cost of approximately \$180 million. Those upgrades are underway and scheduled for completion in 2009. Without the benefit of bringing the upgraded facility on-line, and thereby allow for any determination of the effectiveness of that upgrade on water quality, the Region has imposed new limits on phosphorus and total nitrogen without sufficient scientific support or adequate decision making, and in contradiction to the settlement agreement and Consent Order.

### **III. Specific Factual and Legal Issues**

The District is contesting the following additional provisions of the Permit:

	<b>Part</b>	<b>Term or Provision Appealed</b>	<b>Subject Matter</b>
1.	Page 1 of 19	Identification of Co-permittees for Part D and E	Co-permittees
2.	Part I. A.1	Fecal coliform limit (November 1 – March 31)	Effluent limits
3.	Part I. A. 1.	Ammonium Nitrogen (year round)	Effluent limits
4.	Part I. A.1	Total nitrogen	Effluent limits
5.	Part I. A.1	Total phosphorus	Effluent limits
6.	Part I. A.1	Total aluminum, lead and nickel limits	Effluent limits
7.	Part I. A. 1	Total copper limits	Effluent limits
8.	Part I. A.1	Whole effluent toxicity	Effluent limits, Monitoring and

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			Sampling
9.	Part I. A.1	Effluent limits and monitoring requirements applicable to outfall 001 and 001A (wet weather discharge)	Effluent limits, Monitoring and Sampling
10.	Part I. A.1, Footnote 5	Sampling protocol	Monitoring and Sampling
11.	Part I. A.1, Footnote 6	Fecal coliform sampling parameters	Monitoring and Sampling
12.	Part I. A.1, Footnote 8	Sampling protocol	Monitoring and Sampling
13.	Part I. A.1, Footnote 9	Cold weather denitrification	Operations, Monitoring and Sampling
14.	Part I. A.1, Footnote 13	Sampling schedule and protocol	Monitoring and Sampling
15.	Part I. A.1, Subsection e.	Dry weather description	Effluent limits
16.	Part I. D. and E.	Permittee and co-permittee requirements	Co-permittees
17.	Part I. E. 3.	Infiltration and Inflow (I/I) Plan	I/I Plan

**IV. Grounds For Appeal**

The facts and circumstances outlined in its Petition demonstrate that the contested Permit provisions are based on errors of law and/or fact and/or involve an exercise of discretion or an important consideration that the EAB should exercise its power to review.

**V. Relief Sought**

The District respectfully seeks full review by the EAB of the appealed terms, conditions and limits of the Permit, based upon this Initial Petition and its supplemental Petition for review



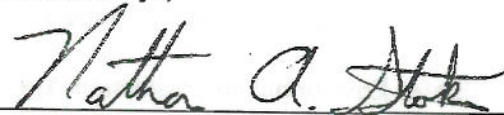
to be submitted in accordance with the Assented Scheduling Motion, if so granted by the EAB.

As part of such review, the District seeks the following relief:

- (1) that the EAB grant the Assented Scheduling Motion;
- (2) that the EAB grant review of the District's Initial and supplemental Petition;
- (3) To the extent stayed by operation 40 C.F.R § 124.16(a) or § 124.60(b) the contested permit conditions and limitations be stayed pending the outcome of this administrative proceeding;
- (4) Stay of appropriate terms and conditions until expiration of the current consent order, inclusive of any extensions granted;
- (5) Any such interim relief as may be appropriate under the circumstances, including orders requiring further development of the administrative record by the Region, and further correction of the technical flaws in the water quality model used to develop the permit limits by the Region; and
- (6) Remand to the Region for further permitting procedures, including, but not limited to:
  1. an order to issue an amended Permit that restores the phosphorus limits to the 2001 Permit levels;
  2. an order requiring it to strike the Permit condition imposing a winter level of 1.0 mg/L Total Phosphorus;
  3. an order requiring it to strike the Permit condition imposing a Total Nitrogen limit of 5 mg/L;
  4. an order requiring it to strike the Permit condition imposing a year round disinfection requirement;

5. an order requiring the Region to remedy any clearly erroneous and/or irrational conclusions of law or fact, and requiring it to consider any data, analyses, and other arguments that the Board determines Region 1 failed to duly consider;
6. and an order on any additional grounds raised in the District's forthcoming supplemental Petition for review.

Respectfully submitted,  
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POLLUTION ABATEMENT DISTRICT  
By its attorneys,



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