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ENVIR. APPEALS BOARD

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November 29, 2008

**By Fax****RE: NPDES Permit No. MA0039853**  
**Wayland Wastewater Management District Commission Treatment Plant**

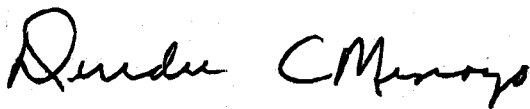
To the Clerk of the Appeals Board:

Please find enclosed two pages inadvertently omitted from a Petition for Review of the above-referenced permit submitted today to the Environmental Appeals Board. These pages were not properly copied by the printing company and the omission was just discovered. Because I could not connect with your online submission service, I was unable to register and send it according to your website directions.

I would be happy to submit a pdf of the entire document but it would have to be sent in chunks because it is more than 20 pages. That may be inconvenient for you as well. Please do inform me if that is desirable.

Thank you.

Sincerely,



Deirdre C. Menoyo

Copies of these two pages have also been faxed separately to:

Robert Varney, Regional Administrator  
U.S. Environmental Protection Agency Region 1Glenn Haas,  
Dept. of Environmental Protection  
Commonwealth of Massachusetts

current Permit documents, EPA repeatedly acknowledges that the Sudbury River is eutrophic in the vicinity of the discharge. In the 2006 Fact Sheet, the Region stated: "Given the over-allocation of nutrients of this watershed, and the existing eutrophic conditions, a flow increase at the Wayland WWTF would not be permitted, unless approved after a rigorous antidegradation review."<sup>15</sup> In the final 2008 Responses to Comments (RTC), EPA stated: "We do agree that the background concentrations indicate impairment due to nutrients...."<sup>16</sup> The connection between phosphorus concentrations and eutrophication could not be more clear: "Given the impairments in the Sudbury River, more stringent total phosphorus limits were calculated and applied."<sup>17</sup> EPA repeats that the slow-moving conditions in the Sudbury will affect the river: "Based on current science, it is anticipated that phosphorus in slow moving river systems like the Sudbury River will, to some degree, accumulate in the sediments during the winter and recycle into the water column during the summer."<sup>18</sup>

In February 2005, DEP produced a report entitled (confusingly) "SuAsCo Watershed 2001 Water Quality Assessment Report" ("DEP Report"). The DEP Report painstakingly summarizes known data for each river/tributary segment, including the area of the discharge. Although total maximum daily loading allocations or "TMDLs" for phosphorus for both the Assabet and Concord Rivers, the Sudbury segment affected by the discharge remains "unassessed" for "aquatic life." However, its "use assessment" indicates the extent of non-native duckweed infesting this river reach:

The non-native aquatic macrophyte *Trapa natans* (water chestnut) was identified in this segment of the Sudbury River, but the extent of the infestation is not well documented (no macrophyte mapping or biovolume estimates). It is believed that water chestnuts were first documented in the Sudbury River near Route 27 in Wayland in the 1950s and a floating mat still persists today (Marden 2005). The infestation has spread downstream and water chestnuts were first documented in Fairhaven Bay in the early 1990s (Marden 2005). The Lincoln Conservation Department has been harvesting water chestnuts from Fairhaven Bay since 2000. The harvesting

<sup>15</sup> Exhibit 13, Undated EPA 2006 Fact Sheet for Town of Wayland NPDES Permit No. MA0039853, p. 5.

<sup>16</sup> Exhibit 14, 2008 Response to Comments ("RTC") for Town of Wayland NPDES Permit No. MA0039853, p. 4.

<sup>17</sup> *Id.*, p. 5.

<sup>18</sup> *Id.*, p. 17.

is accomplished by using the weed harvester from the Great Meadows National Wildlife Refuge. In 2000 ten to fifteen acres of the approximately 75-acre Bay were covered with water chestnuts. In recent years the extent of the acreage covered is decreasing, but along the shallow shore areas floating mats still persevere (Gumbart 2005 and Marden 2005). The Wayland Surface Water Quality Committee also reports that the river is "heavily infested" between Route 27 in Wayland and the Sherman Bridge in Sudbury/Wayland and there are "some long stretches where there's only a 6-8 foot wide channel in the river {and} one section...below the confluence of the old part of the river below the four arch bridge, and the channelized section below the Route 27 bridge" is also heavily infested (Largy 2004). The USFWS has also confirmed heavy infestation between the Route 27 bridge and the Sherman Bridge (Koch 2005). Heard Pond is also infested with water chestnuts and during extreme high waters is connected to the Sudbury River (Largy 2004).<sup>19</sup>

The Tables accompanying the 2006 Fact Sheet show that upstream concentrations of instream phosphorus reported by the Permittee averaged 0.085 mg/l while the downstream average concentration (below the discharge point) averaged 0.108.<sup>20</sup> (This number does not accord with the average 0.83 mg/l reported in the Response To Comments.<sup>21</sup>) Furthermore, data reported in an appendix to the DEP Report show a consistently elevated instream phosphorus concentrations in the Sudbury, downstream of the discharge.<sup>22</sup>

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<sup>19</sup> See excerpt, DEP Report, Exhibit 9, p. 175.

<sup>20</sup> See Exhibit 13, Table 2, Instream Monitoring Data, attached to 2006 Fact Sheet.

<sup>21</sup> See Exhibit 14, RTC, p. 4.

<sup>22</sup> See Exhibit 15, Appendix A, Technical Memorandum, Concord Watershed 2001 DWM Water Quality Monitoring Data, dated February 2005, pp. 17-18.