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ENVIR. APPEALS BOARD

Fax

To: Environmental Appeals Fax: 202 233-0121
Pages: 30 Board Phone: 202 233-0122
From: Doris S. Atkinson Phone: 413 572-3238
Re: NPDES MA 0102148 Date: 7/11/05
Appeal Fax: _____
Copy: _____

☒ Originals to Follow ☐ Please Reply ☐ For Review ☐ As Requested

Remarks:

Overnight delivery to Ariel Rios
Building refused. Delivery
rescheduled for 7/12/05. to
the Colorado Building.

Faxed Copy of Appeal attached.
for due date of 7/11/05.

Please call Doris Atkinson at
413 572-3238 with any questions.

Thank You

Doris S. Atkinson

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Environmental SpecialistsB-341-5-50
July 8, 2005**OVERNIGHT DELIVERY - ELECTRONIC SIGNATURE TRACKING**Environmental Appeals Board
MC 1103B, U.S. EPA, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460Hearing Clerk
Office of Administrative Appeals
Commonwealth of Massachusetts
Department of Environmental Protection
1 Winter Street, 3rd Floor
Boston, MA 02108RECEIVED
U.S. EPA
2005 JUL 11 PM 3:13
ENVIR. APPEALS BOARDRe: Belchertown, MA
NPDES No. MA0102148
Permit Appeal
Request for Adjudicatory Hearing

Dear Environmental Appeals Board and Office of Administrative Appeals:

On behalf of the Town of Belchertown, Massachusetts, Department of Public Works, we are writing this letter for two purposes: 1) to file an appeal of the final NPDES Permit issued to the Town of Belchertown on June 10, 2005 with the Environmental Appeals Board; and 2) to file an appeal and request an adjudicatory hearing from the Massachusetts Department of Environmental Protection Office of Administrative Appeals.

The Town of Belchertown is concerned that certain conditions of the draft NPDES Permit, which the Town believes are unnecessarily stringent, may not be attainable even with the newly reconstructed tertiary treatment facilities paid for by the Town at a cost of approximately \$8.7 million.

The Town of Belchertown was issued a NPDES permit in January 2001. The Town appealed many of the permit limitations in that Permit and EPA withdrew the Permit. The draft Permit and the June 2005 final NPDES permit that is the subject of this appeal contained virtually the same

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permit limitations as had been included in the January 2001 withdrawn permit. A suggestion was made to meet with EPA to discuss the issues under appeal, but EPA did not accept this invitation.

We urge the Board of Environmental Appeals and the Office of Administrative Appeals to undertake full and independent reviews of this appeal.

Requester Information

This request is being filed by the Permit Holder:

Town of Belchertown Department of Public Works
Mr. Steven J. Williams, Director
290 Jackson Street, P.O. Box 670
Belchertown, MA 01007-0670
(413) 323-0415
(413) 323-0470 fax

The requestor is being represented by:

Tighe & Bond, Inc
Consulting Engineers
Omer H. Dumas, Jr., P.E., Vice President
53 Southampton Road
Westfield, MA 01085
(413) 572-3236
(413) 562-5317 fax

A letter from Town of Belchertown Department of Public Works is attached authorizing Tighe & Bond, Inc. to represent the requestor.

Service

Simultaneous with the service of this appeal, the requestor's representative certifies that copies have been sent by United States Mail - Certified Mail to all parties addressed above as well as all parties listed as copied at the end of this letter.

Statement of Interest - Specific Permit Conditions Under Appeal

The Town of Belchertown, through this letter, requests appeal of the following NPDES Permit conditions.

1. Part I A.1 - Page 2 of 10 - Flow limit

The Town of Belchertown does not appeal the specific numeric limitations for flow. However, the Town of Belchertown appeals EPA's decision not to clarify in the permit that the modification of the permit limit from a monthly average basis to an annual average basis is a correction and not a change resulting in less stringent limitations and also appeals the use of the annual average flow limit for calculation of monthly and weekly mass-based limits.

2. Part I A.1 - Page 2 of 10 - Mass Loading Limits (BODs and TSS)

The Town of Belchertown appeals a) the inclusion of mass based limits for five-day Biochemical Oxygen Demand (BOD5) and Total Suspended Solids (TSS) and b) the method used to calculate the limits and c) the policy used by U.S. EPA Region I to establish such limitations.

3. Part I.A.1- Page 3 of 10 - Phosphorus Limits

The Town of Belchertown appeals a) the inclusion of mass based limits for phosphorus and b) the method used to determine mass-based phosphorus limitations.

4. Part I A.1 - Page 3 of 10 - Copper Limit

The Town of Belchertown appeals a) the inclusion of copper limits in the Permit; b) the methods used to establish such limitations; c) the methods used to demonstrate a need to include such permit limitations d) the specific numeric limits included in the permit and e) the denial of the request to establish copper limitations based on the effluent discharge hardness.

5. Part I.A.1 - Page 3 of 10 - Whole Effluent Toxicity Limitations

The Town of Belchertown appeals the permit and monitoring requirements for chronic toxicity. Recent data indicate that the effluent is generally not toxic.

Background Into Development Of The Permit

Copies of previous NPDES Permits, Administrative Orders as well as copies of comments submitted on draft NPDES permits are attached in the Appendices as listed below:

Appendix A - July 8, 2005 Authorization to Represent

Appendix B - June 10, 2005 Final NPDES Permit

Appendix C - October 28, 2003 Comments on October 1, 2003 Draft NPDES Permit

Appendix D - October 1, 2003 Draft NPDES Permit

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Appendix E - January 10, 2001 Final NPDES Permit (Withdrawn)

Appendix F - February 8, 2001 Appeal of January 10, 2001 Final NPDES Permit (without appendices)

Appendix G - July 11, 1997 Final NPDES Permit (Current)

Appendix H - July 19, 2004 Administrative Order

Appendix I - June 12, 2000 Draft MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrients in NPDES Permits.

Appendix J - October 25, 1995 Tighe & Bond Memorandum regarding Evaluation of In stream Dissolved Oxygen.

Previous documents provided with the February 8 2001 NPDES appeal of the January 10, 2001 NPDES Permit not directly relating to the current appeal include:

September 27, 1991 NPDES Permit

December 4, 1996 Draft NPDES Permit

Comments on December 4, 1996 Draft NPDES Permit

September 30, 1997 Administrative Order and Amendments

September 6, 2000 Draft NPDES Permit

Comments on September 6, 2000 Draft NPDES Permit

The Belchertown wastewater treatment facility was previously owned by the Commonwealth of Massachusetts Department of Mental Health. Ownership of the facility was transferred to the Town of Belchertown on October 3, 1994 and the NPDES permit in effect at the time was transferred to the Town on January 13, 1995. That permit expired on September 26, 1995 but remained in effect in accordance with the Administrative Procedures Act.

After taking ownership of the wastewater treatment facility, the Town entered into discussion and correspondence with the U.S. EPA Region I and the Massachusetts Department of Environmental Protection regarding the feasibility of upgrading and expanding the treatment facilities to allow for extension of the Town's sewer system to serve areas with failing septic systems and to significantly improve treatment performance.

Several different design alternatives were evaluated. The design evaluation included estimates for the long-term sewage treatment needs for Belchertown. Final design flows for the facility as

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presented to the U.S. EPA, including senior permitting staff, and the Massachusetts Department of Environmental Protection were established as follows:

Total Annual Average Daily Flow	1.00 mgd
Total Maximum Daily Flow	2.5 mgd
Total Peak Hourly Flow	3.5 mgd

Facilities plans for the project were evaluated and approved by the Massachusetts Department of Environmental Protection. The project ranked high in the State's list for funding for environmental improvements. The Town was awarded a grant from the Massachusetts Water Pollution Abatement Trust to complete the project.

On July 11, 1997 the NPDES Permit was reissued. The reissued permit authorized an increase in the permitted flow from 0.5 to the design flow of 1.0 mgd, along with a decrease in the permitted phosphorus concentration to 0.25 mg/L, and the inclusion of a limit on copper. Because the existing wastewater treatment facility would not be able to meet the new (1997) NPDES Permit limits, the U.S. EPA Region I issued an Administrative Order (AO) requiring that the Town comply with a construction schedule for completion of the new treatment facilities. The Administrative Order as subsequently amended required that the Town complete construction by September 16, 2000. Thus, within less than six years of taking ownership of a poorly operated and deteriorating treatment facility, the Town has turned the facility into a modern state of the art tertiary treatment facility.

However, ten days before the completion deadline for the new facilities, EPA Region I issued the new draft NPDES permit that contained new permit conditions that the treatment facility cannot reasonably be expected to meet. The Town of Belchertown raised objections and presented technical arguments against the inclusion of these requirements during the comment period. U.S.EPA Region I chose not to revise the permit conditions of concern. Therefore, the Town of Belchertown filed an appeal of the January 10, 2001 Final NPDES Permit.

On October 1, 2003 a Draft NPDES Permit was issued. This draft contained permit conditions that were essentially unchanged from the January 10, 2001 Permit that had been withdrawn by EPA following appeal.

On October 28, 2005 the Town submitted comments on October 1, 2003 Draft NPDES Permit. Including reiteration of many of the same comments raised in the appeal of the January 2001 permit that were not adequately or properly addressed in the Fact Sheet to explain why the withdrawn limits were being reissued largely unchanged. The comment letter included specific recommendations for permit modifications that would make the permit acceptable to the Town.

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The October 28, 2003 comment letter also included a request to set up a meeting with EPA to address proposed modifications to the permit. EPA did not agree to this request to meet to discuss the permit issues and, with minor exception, the same issues remain unresolved and are the subject of this current appeal of the June 10, 2005 NPDES Permit.

Documentation of Standing to File Appeal

Regulations governing appeal of NPDES Permits (40 CFR 124.19) stipulate that "...any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision....Any person who failed to file comments or failed to participate in the public hearing may petition for administrative review only to the extent of the changes from the draft to the final permit decision....The petition shall include a statement of the reasons supporting the review, including a demonstration that any issues being raised were raised during the public comment period..".

Tighe & Bond, on behalf of the Town of Belchertown, filed comments on the October 1, 2003 draft NPDES Permit, by letter dated October 28, 2003. A copy of this letter is included in Appendix C as demonstration that the issues being raised were raised during the public comment period. Tighe & Bond's comment letter presented objections to each of the items of appeal.

Comments on the October 2003 Draft Permit

By letter dated October 28, 2003 on behalf of the Town of Belchertown, Tighe & Bond provided comments on the draft NPDES Permit. These included comments on the flow limit, mass loading limits for BOD and TSS, mass based phosphorus limits, copper limits and whole effluent toxicity testing requirements and limits. However, each of these issues has yet to be resolved and are the subject of this appeal.

For reference, the comments on the draft NPDES permit which are relevant to the items under appeal in this letter are restated below along with EPA's response and a more detailed discussion of the basis of appeal for each item.

Appeal Item 1 - Part I A.1 - Page 2 of 10 - Flow limit

Tighe & Bond Comment on Draft Permit:

Comments relating to flow and use of the flow limit for calculation of other limits are included under the subject headings for BOD and TSS Mass loadings and phosphorous loadings.

EPA Response:

Responses to the comments on the latest draft relating to flow and use of the flow limit for calculation of other limits are included under the subject headings for BOD and TSS Mass loadings and phosphorous loadings.

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Appeal: The Town of Belchertown appeals the flow limit for flow on the grounds that EPA and MADEP have incorrectly used the annual flow limit to establish unnecessarily stringent mass-based limitations for other parameters and on the grounds that EPA and MADEP have incorrectly argued that the flow limit has been relaxed and therefore other limitations have been made more stringent to address anti-backsliding concerns.

The Town of Belchertown had previously made the request for a clarification that the change in the flow limit from a monthly limitation to an annual limitation in the permit was not a modification, but was a correction, for a final NPDES permit issued by EPA and MADEP on January 10, 2001. The January 2001 Permit was subsequently withdrawn by EPA in response to an appeal filed by the Town of Belchertown. Copies of the withdrawn NPDES Permit and Belchertown's appeal of that permit are provided as attachments. The Town made this request specifically because of the potential for incorrectly interpreting and applying flow limits in light of anti-degradation and anti-backsliding provisions.

In previous response to comments on the September 6, 2000 Draft NPDES Permit, EPA and MADEP stated:

"EPA and MA DEP have instituted a policy change in the way flow limits in NPDES permits for POTWs are calculated. The change in the Belchertown WRF's permit is not only to this permit, but is taking place in all POTW permits as they are reissued, and is in recognition that the design flows expressed in facilities plans, which were previously limited as monthly average flows are actually expressed as annual averages. The annual average flow will be a twelve month running average which will allow variation in flows at WWTPs, particularly during the spring time runoff events. Footnote 1 in the draft permit provide clarification on how to calculate the annual average flow, and it is now a part of the standard language in permits. We hope this clarifies the reason for the change in the flow limit. We did not however, add the requested footnote because it is not necessary to clarify the limit."

The Town of Belchertown does not take exception to the specific numeric limitations for the annual average flow limit included in the permit. However, because EPA's response to comments on the draft for the current permit indicates that the flow limit was changed from a monthly limit to an annual limit, and EPA further uses this assertion to argue that there is the need for certain mass-based limits to address anti-backsliding provisions (contrary to their response to comments on the 2000 draft), the Town of Belchertown appeals the flow limit and EPA's decision not to clarify in the permit that the modification of the permit flow limit from a monthly average basis to an annual average basis is a correction and not a change resulting in less stringent limitations. As discussed below, this issue relates directly to whether or not other provisions of the permit are subject to federal anti-backsliding and state anti-degradation provisions.

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The second half of the second sentence of EPA's response quoted above clearly indicates that EPA's policy to modify flow limits in NPDES permit from monthly limits to annual limits (without a change in numeric value) is a correction to permit conditions rather than a modification resulting in less stringent limitations ("... in recognition that the design flows expressed in facilities plans, which were previously limited as monthly average flows are actually expressed as annual averages.").

We strongly disagree that the use of the annual average flow for computing monthly and weekly BOD and TSS mass based limits as well as phosphorus mass based limitations is required to address anti-degradation or anti-backsliding requirements and contend that the U.S. EPA and the Massachusetts Department of Environmental Protection have based the requirement for mass based limits and the method for determining mass based BOD and TSS limits on an erroneous conclusion of law directly relating to the interpretation of the change in the flow limit from an average monthly limit to an annual average limit. Furthermore, this erroneous conclusion could have been prevented if the permit had been modified as requested during the earlier comment period to clearly state that the change represents a correction to the previous permit, rather than a modification of permit requirements.

The antibacksliding and anti-degradation regulations allow administrative corrections to NPDES Permits without impacting anti-degradation or antibacksliding concerns. The U.S. EPA and the Massachusetts Department of Environmental Protection are in error in stating that the mass-based BOD and TSS limitations are required to address these issues. The requested permit modification to specifically recognize the change to the flow limit as a correction would eliminate the perceived need to impose more stringent discharge limitations than contained in the previous permit.

EPA indicates that they did not add the requested footnote because it is not necessary to clarify the limit. While the clarification is not needed to identify the numeric value of the flow limit or the method used to calculate compliance with the flow limit, the clarification is needed to demonstrate compliance with federal anti-backsliding provisions and EPA and MDEPs own conflicting comments between their responses to the two drafts clearly indicates that there is a benefit to adding this simple clarification.

Because EPA improperly presents anti-backsliding concerns relating specifically to the discharge flow rate as a basis for denying requests made by the Town to eliminate weekly mass based limitations for BOD and TSS, the Town requests that appeal of the flow limit be allowed on the grounds that EPA used the annual flow limit to improperly establish unnecessarily stringent mass-based weekly BOD and TSS limits.

The Town specifically appeals the use of the flow limit for establishing any weekly or monthly mass based limits and appeals the use of consideration of the flow limit to impose any constraints on the basis of anti-backsliding and anti-degradation. The Town of Belchertown is not asking that the numeric annual average flow limit be changed, only that the clarification be

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made and that the correction to the limit not be allowed as an argument to be used to place unnecessary burdens on the Town.

Conclusion: Therefore, on behalf of the Town of Belchertown, we request that the Environmental Appeals Board and the Office of Administrative Appeals direct U.S. EPA Region I and Massachusetts Department of Environmental Protection to modify the permit as requested to indicate that the change to the flow limit is a correction, not subject to antidegradation or anti-backsliding requirements.

Appeal Item 2 - Part I A.1 - Page 2 of 10 - Mass Loading Limits (BOD₅ and TSS)

Tighe & Bond Comment on Draft Permit:

"Monthly and weekly mass loading limits for BOD₅ and TSS are not included in the current permit, but had been proposed in the September 2000 draft permit. The current draft contains the same limits as the withdrawn 2000 draft permit. These limits were derived by multiplying the monthly and weekly concentration limits by the annual average flow rate (1.0 mgd) and a conversion factor of 8.34 to arrive at a mass loading value.

As noted in our comments on the September 2000 draft permit, the Town of Belchertown takes exception to this approach as it uses an annual average flow to compute weekly mass limits. Since average weekly flows can be significantly greater than average annual flows, any mass limit would be more appropriately calculated based on flows that correspond with the loading frequency in question, i.e., maximum monthly flow and maximum weekly flow. Additionally, because the monitoring requirements in the new permit require sampling once per week, this effectively results in the weekly average condition being the equivalent of a daily maximum limit. The approved basis of design for this facility included a maximum daily peaking factor of 2.5 times the annual average flow. Based on this peaking factor for weekly flow conditions, a mass based BOD₅ limit of 63 lbs/day would result in a required effluent concentration of 3.0 mg/L. An effluent BOD₅ limit of 3.0 mg/L cannot be reliably achieved and was not included in the approved facilities plan and final design.

Although the Town has previously contested the inclusion of weekly mass based limits, noting that imposing weekly and monthly mass limits would unreasonably restrict facility discharges without a technical basis for establishing the new limit, and had requested that the mass loading limits be either removed from the draft permit or adjusted to reflect the design maximum monthly and weekly flow conditions for the facility, the new draft permit includes the same proposed limits, calculated using the same methods, based on annual flow.

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While the Town continues to disagree with the basis for the proposed based mass based limits for BOD and TSS, the proposed limits would be acceptable to the Town if clarifications are made to the permit to indicate that the calculations of discharge BOD and TSS mass for compliance monitoring purposes are to be made using the same methods used by EPA to derive the permit limits (i.e. permit compliance calculations should be made using the annual average flow rate as required to be reported in monthly monitoring reports and corresponding weekly or monthly average concentrations). This approach will allow direct comparison of the discharge monitoring data with the permit limitations using the same basis for establishing calculated mass values. This method would be more consistent with the basis for the proposed limits.

Suggested modifications to the permit are as follows:

Add footnote 10 to all mass based limitations for BOD and TSS to read as follows:

"10. The permittee shall use the annual average flow as shall be reported each month (see footnote 1) and corresponding weekly or monthly average concentrations in calculating compliance with all mass based limitations."

EPA Response:

"MADEP adopted a policy establishing flow limits in POTW permits as an annual average in order to account for seasonal flow variations, particularly those associated with high flow and high groundwater which commonly occur in the spring time. See June 12, 2000, MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrients in NPDES Permits ("Flow Policy"). The calculation of the Belchertown flow is based on annual average flow rather than the monthly average flow calculation employed in the prior permit. Consistent with the Flow Policy, the Agencies have imposed weekly and monthly mass limits in order to maintain approximate overall pollutant loadings of BOD and TSS in the receiving water.

Mass limits are reasonable in light of the continuing severe impairment of the receiving waters - Lampson Brook, Weston Brook and Forge Pond - caused by Belchertown WRF effluent discharges and other inputs. Each of the receiving waters is each listed on the Massachusetts Year 2002 List of Impaired Waters under Category 5 as water quality limited segments requiring the calculation of a total maximum daily load of pollutants in order to implement water quality standards. Lampson Brook and Weston Brook are impaired by unionized ammonia, chlorine, excessive nutrients and organic enrichment/low DO, while Forge Pond is impaired by nutrients and noxious aquatic plants. As the Agencies explained in the Fact Sheet, the use of the annual average flow to calculate weekly and monthly mass loading limits will tend to offset any increase in

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Appeal: The Town of Belchertown appeals a) the inclusion of mass based limits for five-day Biochemical Oxygen Demand (BOD5) and Total Suspended Solids (TSS) and b) the method used to calculate the limits and c) the policy used by U.S. EPA Region I to establish such limitations. This appeal is based on the use of incorrect assumptions used by EPA in developing such limitations, inconsistent application of such limitations, and the following errors made by EPA and/or MADEP in establishing such limitations and denying revision of the draft permit as requested by the Town.

1. EPA and MADEP incorrectly interpreted requirements for anti-backsliding and anti-degradation in establishing the weekly mass-based limitations.

In the response to comments on the draft permit EPA argues that the use of the annual average flow to calculate weekly and monthly mass loading limits will tend to off-set any increase in loading that might otherwise be occur as a result of the new definition of the flow limit. While this may be true for monthly average loadings, where the previous permit included a flow limit for monthly flow, there has never been any limitation on weekly flow limit, and this argument is not applicable to limitations for weekly discharge loadings. Establishing a weekly based mass discharge limitation is not necessary to address anti-back sliding and anti-degradation provisions as the previous discharge permit was not more stringent with respect to weekly BOD and TSS discharge requirements.

2. EPA incorrectly interpreted Massachusetts Water Quality Certification Requirements.

The Massachusetts Water Quality Certification attached to the Final Permit requires mass based monthly limits for BOD and TSS to meet the Massachusetts Water Quality Standards Antidegradation Provisions. The Water Quality Certification does not include any discussion or requirements with regard to establishing weekly discharge limitations for BOD and TSS. Weekly massed based limitations for BOD and TSS are not necessary for Water Quality Certification.

3. EPA incorrectly applies a draft Massachusetts nutrient control policy for control of non-nutrient parameters.

The response to comments on the draft permit references a June 12, 2000 MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrient in NPDES Permits as the basis for imposing weekly and monthly mass-based BOD and TSS limitations. This policy appears to have been issued as a draft only. MADEP was contacted on July 7, 2005 and no final policy was identified (see Appendix I). Paul Hogan of MADEP said that it is an "operative policy", meaning that it describes how DEP staffers write NPDES permits but it is not a formal policy that has been adopted for the public. It is not available through the web site.

The use of the referenced draft policy as a basis for establishing final NPDES permit limitations is not justified on four grounds. 1) The policy does not provide guidance on the flow value to be

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used for establishing mass based limitations for monthly average and weekly average BOD and TSS limitations, contrary to EPA's response comment. 2) The policy is a draft policy and has not been finalized and therefore is an inappropriate basis for establishing final enforceable NPDES Permit limitations. 3) The policy has not been released for any public review or comment. 4) Neither EPA nor the Massachusetts Department of Environmental Protection have performed an analysis of the potential adverse impacts of the policy as drafted. Based on these considerations, the draft policy should be disallowed as a basis for establishing enforceable final NPDES discharge limitations.

The MADEP policy cited by EPA does not reference establishment of weekly or monthly based limitations. The policy discusses that flow limits should be based on annual average values (as presented in the permit) and then goes on in the same sentence in which annual flow limits are discussed to state that BOD and TSS limits should be expressed in both concentration and mass units. There is no mention of establishing weekly or monthly BOD or TSS limits. It does not follow from this draft policy that the annual average flow rate should be used for establishing monthly or weekly mass-based limits, especially given that the draft policy establishes that the intent of using an annual average flow rate is to address the variability inherent in wastewater treatment plant flows. There is nothing in the draft policy that addresses the need for or the method to be used to establish monthly or weekly mass limits. EPA is incorrect in applying the draft policy language developed for annual average limitations for establishing unnecessarily stringent weekly or monthly mass-based limitations and factually errs when referencing this policy as forming the basis for any decision to apply annual average flow limits to calculation of monthly or weekly mass-based limits.

The draft MADEP policy cited by EPA is intended to address control of nutrients as indicated in the title. The draft policy discusses only flow, total phosphorus and nitrogen. BOD and TSS are not generally considered to be nutrients and the policy does not indicate that they are considered as such for the context of the policy. The only reference to BOD and TSS in the draft policy is in relationship to determination of annual flow limits. The fact that the language of the policy lists BOD and TSS as separate from nutrients ("...BOD, TSS, and nutrients...") further indicates that BOD and TSS are not considered nutrients for the purposes of the draft policy.

Use of this draft policy as the basis for establishing mass based permit limits for BOD and TSS is inappropriate and any permit limits for BOD and TSS established based on this use of the draft policy should be eliminated from the permit.

4. EPA may have failed to include documents cited in the response to comments in the administrative record as specified under Section 124.17.

Section 124.17 requires that EPA include documents cited in response to comments in the administrative record. No publicly available copies of the draft June 12, 2000 MADEP-DWM NPDES Permit Program Policies Related to Flow and Nutrient in NPDES Permits cited by EPA were identified by Tighe & Bond or the Town. MADEP employees indicated by telephone that

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or contribute to further impairment of the receiving waters or result in the lowering of water quality.

EPA and DEP have previously been provided with documentation demonstrating that downstream Dissolved Oxygen (DO) concentrations are not impacted by the discharge from the POTW, but are directly related to the presence of large wetland areas through which Lamson Brook flows which reduce oxygen levels due to the presence of naturally occurring anoxic soils. A copy of this information with out attachments is provided in Appendix J. Downstream dissolved oxygen concentrations are virtually the same as observed for a control wetland system that receives no wastewater discharges and is protected as a water supply area.

Eutrophication rates are controlled by nutrient availability rather than availability of organics measured by BOD. There is no technical justification to place extremely burdensome weekly mass based BOD limits in the permit when the concentration limits are as low as 5.0 mg/L for a monthly average and 7.5 mg/L for a weekly average.

9. EPA is inconsistent in its application of requirements for weekly mass-based BOD and TSS permit limitations.

Tighe & Bond and the Town of Belchertown are aware of at least one other Massachusetts NPDES Permits for POTW issued within the last year that contains weekly and maximum daily concentration limitations for BOD and TSS, but does not contain weekly or daily mass based limitations for BOD and TSS. While specifics of receiving water quality are different, there is no established requirement for EPA to express weekly BOD and TSS limitations in terms of both concentration and mass.

10. Methods used by EPA to establish limitations are inconsistent with methods required to be used by the Town for compliance monitoring.

The Town requested that the draft permit be modified so that the methods used to demonstrate compliance with the permit limits be equivalent to methods used to establish the limits. It is inappropriate for EPA to require a different and more stringent standard for enforcement of a limit than for establishing the limit. To use an analogy, this has the same effect as establishing a speed limit in miles per hour and enforcing that limit by measuring kilometers per hour. While that would ensure compliance with the limitation, it is clearly not justified and is unduly burdensome and legally indefensible. If the annual average flow is used for the development of a limit, the same parametric should be used for demonstrating compliance with the limitation. EPA has failed to provide any justification for denying the request to allow equivalency in calculation of permit compliance, and the permit conditions should be removed.

11. Agency comments disregarding the Facilities Planning Process are cause for concern for any publicly funded facility.

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Agency comments disregarding the Facilities Planning Process are cause for concern for any publicly funded facility. It has been only 8 years since the facility planning process completed. There are no new conditions in the receiving waters that warrant conditions more stringent than included in the 1997 permit and accounted for in the design of the facility. The comments regarding use of peaking factors is also inconsistent, as the Agencies disallow consideration of a peaking factor for weekly limits, but indicate that the Town may use daily peaking factors at its discretion.

In summary, EPA Region I and the Massachusetts Department of Environmental Protection have issued incorrect findings of fact in stating that the proposed mass based limits represent no change to the previous permit. We believe that the conclusions that the mass based limits are required either for antidegradation / antibacksliding concerns or based on the requirements of 40 CFR 122.45 (f) (1) are also incorrect. The inclusion of the mass based limits is based on an un-reviewed draft policy which represents an important discretionary policy which warrants review by the Environmental Appeals Board and the Office of Administrative Appeals, not only for its impact on the Town of Belchertown but also as it relates to impacts to a wider community and the failure to provide adequate public notice and opportunity for comment and failure to adequately consider potential adverse impacts of such policy. We urge the Environmental Appeal Board and the Office of Administrative Appeals to review not only the content of the contested permit conditions but also the process by which EPA Region I and Massachusetts Department of Environmental Protection derived said conditions.

Conclusion: Pursuant to this appeal, on behalf of the Town of Belchertown, we request that the Environmental Appeals Board and the Office of Administrative Appeals direct U.S.EPA Region I and the Massachusetts Department of Environmental Protection remove the mass based limitations for weekly BOD and TSS included in the NPDES Permit. We also request that if mass based limitations are not removed, that the permit be modified to stipulate that the same flow parameter used for developing the limits (i.e. annual flow) be used for the purposes of demonstrating permit compliance.

Appeal Item 3 - Part I.A.1- Page 3 of 9 - Phosphorus Limits**Tighe & Bond Comment of Draft Permit:**

"As with BOD and TSS, the monthly average mass based limit for phosphorus has been calculated by EPA using the annual average flow permit limit. Citing the same concerns as noted above, permit compliance calculations should be made on the same basis as used for establishing the permit limit.

Suggested modifications to the permit are as follows:

Add footnote 10 to mass based limitations for phosphorus to read as follows:

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"10. The permittee shall use the annual average flow as shall be reported each month (see footnote 1) and corresponding weekly or monthly average concentrations in calculating compliance with all mass based limitations."

EPA Response:

"Mass based limits for phosphorus have been added to the permit in order to maintain loadings to the receiving water and to ensure compliance with Massachusetts WQS. Please see Response #1 above. Given that a major cause of impairment of the receiving water is phosphorus-driven cultural eutrophication, the Agencies believe that it is appropriate to minimize the risk of increased phosphorus loading by opting for a limit based on the annual average flow rather than the less conservative alternatives set forth by the Permittee."

Appeal: The Town of Belchertown appeals a) the inclusion of mass based limits for phosphorus and b) the method used to determine mass-based phosphorus limitations.

The Town appeals the inclusion of a mass based limit on the basis that the Agencies have improperly denied the requested permit modification to allow use of the annual average flow for permit compliance consistent with its use for permit calculation.

The recently rebuilt tertiary treatment facility was designed to meet a phosphorus limitation of 0.25 mg/l during warm weather conditions when the facility is also required to meet very low BOD and TSS limitations. Meeting this limit on a year round basis, especially during cold weather will impose additional restrictions on the wastewater treatment facility. U.S. EPA and the Massachusetts Department of Environmental Protection have already indicated that it is appropriate to relax BOD and TSS restrictions during cold weather conditions. Use of an annual average value for flow for permit compliance would allow appropriate latitude in cooler months when phosphorus removals are more difficult to achieve and flows can be higher. The Agencies have failed to demonstrate a need for monthly phosphorus loading limits. Annual loadings are more meaningful in terms of downstream cultural eutrophication.

The second issue under appeal is the procedure itself used for determining mass based limits and compliance with those limits. As argued earlier for BOD and TSS limits as discussed above, the practice of developing limits by one set of standards and enforcing compliance through a separate set of standards is not legally defensible.

EPA, in their response to comments on an earlier draft permit acknowledges that the modification to the flow limit is a correction. They state that the purpose for correcting the flow limit is to "... allow variation in flows at WWTPs, particularly during the spring time runoff events." The method used to calculate a monthly average phosphorus mass limit is inconsistent with the correction of the flow limit to an annual average limit, and does not allow variation in flow as stated by U.S. EPA Region I.

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Conclusions: On behalf of the Town of Belchertown, we request that the Environmental Appeals Board and the Office of Administrative Appeals direct U.S.EPA Region I and the Massachusetts Department of Environmental Protection to delete the mass based limitations for phosphorus from the permit or require that the permit be revised to indicate that compliance with the limit is to be determined using annual average flow.

Appeal Item 4 - Part I A.1 - Page 3 of 9 - Copper Limit**Tighe & Bond Comment of Draft Permit:**

"In 1999 EPA made modifications to the water quality criteria for copper. The new limits for copper have been calculated at lower values than contained in the 2000 draft and the 1997 permit. The proposed limits of 6.4 ug/l as a monthly average and 9.2 ug/l as a maximum daily limit are significantly below the range of values reported in the last two years of data reviewed.

In comments presented to EPA on the September 2000 draft permit it was noted that the copper limit proposed at that time was extremely stringent and may be technically unachievable. In addition, there are numerous technical reasons why the need for copper limits remains in question including, the reduction of copper toxicity due to decreased copper bioavailability associated with complex formation with other materials, the limitations of commercial laboratory testing and the methods used for development of the Gold Book standards. For a number of years EPA has been working with Water Environment Federation (WEF) to develop a biotic ligand model for copper toxicity to account for the influences of wastewater characteristics with the reduction in copper toxicity. However, to date, EPA has not used the results of this research to address the problems numerous communities are facing in regard to extremely stringent copper limitations. For this reason, the Town of Belchertown requested that copper limits not be included in the previous draft permit until these issues were resolved.

While it appears unlikely that EPA will soon modify the criteria values for copper based on the biotic ligand model, the calculation of the copper limit as currently presented by EPA in the Fact Sheet is a function of hardness. The higher the hardness, the less toxic copper is and the higher the allowable discharge limit. EPA has used a hardness value of 60 mg/l for calculating copper limits. The Fact Sheet does not provide a statement of basis for this value and we believe that it is inappropriately low. The data included in the toxicity tests from 2002 and 2003 indicate that this value is not reflective of typical in-stream hardness after mixing with the discharge. The average outfall hardness was 94.5 mg/l and the average in stream hardness above the outfall was 72.9 mg/l. Based on the 7Q10 dilution ratio of 1.065, the calculated hardness down stream of the outfall (the location used as the basis for calculating compliance with State Water Quality Standards)

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is 93.2 mg/l. If the in stream hardness is assumed to be 93.2 mg/l, the calculated monthly average limit for copper would be 9.0 ug/l rather than 6.4 ug/l and the calculated maximum daily limit would be 13.4 ug/l rather than 9.2 ug/l.

While recalculating the copper limits based on the observed average hardness of 93.2 mg/l will not by itself bring the facility into compliance with the proposed limits, it would make a significant difference in the potential ability to comply with the limit.

Because hardness so strongly effects the theoretical toxicity values used for establishing copper discharge limitations, and because hardness is a parameter the POTW has the potential to control, we believe that POTWs should be allowed to control hardness through chemical addition as part of the treatment process in order to allow a higher discharge copper limits, much as alkalinity is allowed to be added in order to achieve pH limitations. For facilities that add sodium hydroxide for control of pH, an operational change to a magnesium hydroxide, for example, could be used to both control pH and add hardness to the effluent.

Given the large potential additional cost to provide treatment to remove copper through other forms of chemical addition, such as polyaluminum chloride to achieve the low limits included in the draft permit, it would be preferable to develop more flexible alternative permit limits that are expressed in the permit as a function of hardness, using the same equations used by EPA to develop the proposed discharge limitations. While the limitation could be expressed in the permit directly in the form of the equations used by EPA to develop the proposed limitations, for compliance monitoring and for operational evaluation, it may be simpler to express the limits in tabular form based directly upon EPA's equations as presented in the attached table 1.

While this may be a new approach for expressing copper discharge limitations in NPDES permits, the proposed method is based on establishing limitations using the same numeric methods used by EPA in the draft permit, but addresses the actual site specific discharge hardness at the time of permit compliance monitoring.

This approach will, necessarily require collection of additional discharge hardness data to determine compliance, and it is recommended that hardness data be collected at the same frequency and time as effluent copper discharge monitoring to allow direct evaluation of allowable copper discharges at the time of discharge. This approach retains a significant level of protective conservatism in that the limits are still based assuming annual average flow occurring at a time of minimum (7Q10) stream flow.

Furthermore, addition of hardness to the treatment process is expected to provide an incremental improvement in copper removal efficiency. While this alone is not expected to be sufficient to bring the facility into compliance with the limits currently contained in the draft permit, combined with the proposed mechanism for hardness based permit limits as discussed above, addition of hardness may be sufficient to

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achieve permit compliance without the addition of further amounts of chemicals such as polyaluminum chloride which are known to cause problems with sludge processing and may also interfere with achieving the very low solids limits imposed on the Belchertown POTW. Use of polyaluminum chloride for copper control may also have an undesirable side effect of increasing aluminum concentrations in the final treated effluent.

Suggested modifications to the permit are as follows:

On page 3 of 10, replace the line beginning Total Recoverable Copper with the following:

"Total Recoverable Copper ug/l.

See attached Table 1 for limits 1/month 24-hour composite".

Hardness mg/l Report 1/month 24-hour composite".

Insert attached Table 1.

Tighe & Bond and the Town of Belchertown recognize that the inclusion of hardness based limitations for copper expressed directly in the permit may be a new concept. We are unaware of other similar discharge limits. However, we are aware that in other permits, specific limitations for pollutant parameters have been expressed as a function of other discharge parameters, such as if the flow is above a given value, a pollutant discharge limitation may be one value and if the flow is below the given value, the pollutant discharge limitation is another value. Therefore, there is precedent for establishing different permit limits to be complied with under different discharge conditions.

All of the modifications to the permit proposed in this letter are consistent with the specific methods used by EPA to determine the limits included in the draft permit. There are no adjustments or modifications to State Water Quality Standards used for development of the proposed revised limitations.

The expression of the limitations for copper is consistent with EPA's requirement to express limitations for toxic metals in terms of concentration limits.

While the development and inclusion of permit limitations are expressed as a function of hardness may present a minor additional level of effort for both the POTW and EPA to monitor and verify permit compliance, the potential benefits to the Town, including financial benefits, significantly outweigh this potential drawback.

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Given the high level of importance in reaching agreement on the proposed modifications prior to finalizing the NPDES permit, on behalf of the Town of Belchertown, Tighe & Bond requests that a meeting be set up to discuss these issues directly with EPA prior to issuing the final permit. Please notify the undersigned of dates you may be available to meet to discuss these issues.

Table 1		
Effluent Copper Concentrations as a Function of Hardness		
POTW Hardness	Monthly Average Copper Limit	Daily Maximum Copper Limit
mg/l	ug/l	(ug/l)
(minimum value)		
60	6.4	9.2
80	7.9	11.6
100	9.3	14.3
120	11.1	17.0
140	12.7	19.7
160	14.3	22.3
180	15.8	24.9
200	17.2	27.5
220	18.7	30.1
240	20.2	32.7
260	21.6	35.2
280	23.0	37.8
300	24.4	40.3
Notes:		
Based on a receiving stream dilution factor of 1.065		
Hardness used for determining limit shall be equal to or greater than stated value.		
Hardness analyses must be performed on the same collected for copper monitoring.		

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Environmental Specialists***EPA Response:**

"The copper limit is based on national criteria recommendations promulgated by EPA under Section 304(a) of the Clean Water Act and adopted by Massachusetts as a part of its water quality standards. See EPA National Recommended Water Quality Criteria (2002 and 314 C.M.R. § 4.05(5)(e)). Massachusetts WQS require that EPA criteria established pursuant to Section 304(a) be used for toxic constituents, including copper, unless site specific criteria have been established. The Agencies do not believe that it is advisable to defer permitting decisions based on the potential that a revised copper criterion value will be developed in the future. This is particularly true in the case of toxic pollutants, which can adversely impact aquatic life in the short-term. Accordingly, the copper limit will remain in the Final Permit.

The Agencies concur with the analysis of downstream hardness values, and have changed the permit accordingly. Based on the revised hardness value, the new copper limit is 9.4 ug/l monthly average and 14.0 ug/l maximum daily. Monthly average copper values, as documented in Attachment C of the fact sheet, range from 5.0 ug/l - 29.1 ug/l. These values represent a reasonable potential for the Belchertown WRF discharge to cause or contribute to an exceedance of the copper criteria. Under 40 CFR § 122.44(d) of the NPDES regulations, EPA is obligated to include the limit regardless of whether the treatment facility is capable of achieving it. At any time, the Permittee may pursue development of a site specific criterion, and upon approval by DEP and EPA, the permit can be modified to reflect the site specific criterion.

The Agencies do not concur with the proposal to establish a copper limit that varies with hardness. A variable copper limit would be administratively impractical from a compliance monitoring standpoint and is significantly more complex than the example provided by the Permittee. Given the Agencies' resource limitations and the extensive backlog in the NPDES permitting program, this additional level of complexity is not justified. In addition, the Agencies do not believe that it is practical from a facility operations standpoint to ensure compliance with a variable limit. Most POTW facilities achieve copper limits through a combination of source reduction efforts and operational changes at the treatment facility. It is not practical to implement a source reduction program or operational procedures to meet a limit that could regularly change. Furthermore, the Agencies do not consider it to be appropriate to artificially increase the effluent hardness to levels well above the natural in stream hardness in order to discharge higher levels of copper with little understanding of the fate and transport of this copper. For instance, copper discharged by the facility may accumulate in the sediments of Forge Pond downstream of the facility. Altering the natural chemistry of the receiving water is not consistent with the goals of the Clean Water Act to maintain the chemical, physical, and biological integrity of ambient waters.

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Alternatives for achieving copper limits, including potential indirect impacts of alternatives such as the chemical addition of poly aluminum chloride, may be addressed through an administrative compliance order if the Permittee is unable to meet the permit limit. A "monitor only" requirement of aluminum has been added to the permit in order to collect data on the potential for excessive amounts of aluminum in the treated discharge."

Appeal: The Town of Belchertown appeals a) the inclusion of copper limits in the Permit; b) the methods used to establish such limitations; c) the methods used to demonstrate a need to include such permit limitations d) the specific numeric limits included in the permit and e) the denial of the request to establish copper limitations based on the effluent discharge hardness.

The POTW cannot currently meet NPDES discharge limitations for copper. The facility serves mostly domestic households with a few commercial businesses. The water supply is not under the control of the Town, and there are few alternatives for further reduction in influent copper concentrations available to the Town. The Town completed the first Annual Copper Optimization Report as required in January 2005. The Town is currently meeting the interim limits for copper of 20 ug/L included in the Administrative Order. However, there is no mechanism to come out from under the Administrative Order without extremely costly treatment that may add other potentially toxic chemicals or modify the limits for copper, noting in particular that existing copper concentrations do not cause any observable effluent toxicity.

The water quality criteria for copper are expressed as a numeric function of hardness. Hardness is used to calculate the permit values included in the permit. EPA acknowledges that they are empowered to modify NPDES permit limits for copper based on the in stream water hardness and that the permit can be modified to reflect site specific criteria at any time. However, neither EPA nor MDEP has developed appropriate guidance documents, procedures, or protocols for adopting what they might consider to be allowable site specific criteria.

Absent such guidelines for development of site specific water quality criteria, and in light of EPA's and MDEP's historic unwillingness to seriously consider development of site specific limitations, the Town has presented an alternative that, in conjunction with ongoing efforts to minimize influent copper loadings, would meet all of the federal and state water quality standards, would provide a reasonable means to help the Town come into compliance with NPDES copper limitations, would not require use of expensive and potentially toxic chemicals to reach compliance, and would allow EPA, MDEP and the Town to reach closure on the Administrative Order.

The Agencies deny the proposed alternative because they claim that it would be administratively impractical. The proposed method is no more difficult than looking up two numbers on a table. This is certainly less administratively complex than the administrative effort on the part of the Town to design, build, operate and maintain any form of treatment system that could potentially consistently comply with the permit limits.

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The Agencies deny the proposed alternative because they claim that given the Agencies' resource limitations and the extensive backlog in the NPDES permitting program, this additional level of complexity is not justified. The ability to clear out the large backlog of Administrative Orders for copper compliance alone that are currently placing a significantly large burden on EPA and DEP resources certainly outweighs any small additional burden that the slightly more complicated permit limits would have. Additionally, the small burdens placed on the Agencies must be weighed against the significantly greater burdens that will be imposed on a small public facility that has just recently expended in the order 8 million dollars to improve the treatment plant they inherited from the State.

The Agencies cite that most POTW facilities achieve compliance with copper concentrations through a combination of source reduction efforts and operational changes at the treatment facility. The Town is proposing to do exactly this. The Town has successfully implemented a copper optimization program for the POTW, including corrosion control programs, public outreach, system evaluations and a copper reduction assessment to be updated on an annual basis. Contrary to the implications included in the Agencies response, the existing source reduction program would not be modified to adjust to changing limits under the proposed permit limitations. One of the goals of the source reduction program would continue to be minimizing treatment costs, including costs for chemical addition, whether that is through addition of hardness or through addition of chemicals such as polyaluminum chloride.

The Agencies deny the proposed alternative because it would artificially raise the effluent hardness. It is not uncommon for NPDES permits to include requirements that alter the chemical or physical characteristics of a wastewater. Control to meet pH limits often requires artificial chemical addition. Disinfection with Chlorine artificially adds chlorides and increases specific conductance. Any other feasible treatment alternative for copper will add some form of additional chemical to the wastewater, and as the Agencies acknowledge, one of the most promising treatment alternatives (polyaluminum chloride) may have unintended consequences as well, with the potential for creating toxicity due to aluminum.

The Agencies raise concerns not previously presented regarding the potential for copper to accumulate in pond sediments. Because this concern was not raised in the draft permit and given the limited time to appeal the final permit, the Town has not had an opportunity to fully address or rebut this potential concern. We are unaware of this concern having been raised for development of enforceable discharge standards for any other POTW.

However, we do offer the following comments. First, effluent copper concentrations have been decreasing first through construction of the new wastewater treatment facilities and second through the ongoing source control efforts. Second, even with the historically higher copper concentrations there has been no indication that these have impaired downstream wetland and water resources or ecosystems. Third, the total flow and thus the dilution of the residual wastewater treatment flow at Forge Pond is substantially greater than in Lampson Brook at the outfall, which is almost negligible. By the time the effluent reaches Forge Pond,

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the concentration of copper contributed by the POTW is significantly lower than at the outfall, and the concern for accumulation of copper in sediments should also be lessened. Finally, while there are many facilities with higher discharge limitations, we are not aware of any instances where higher permitted loadings have resulted in demonstrated harm to the environment due to accumulation of copper in soils.

Conclusion: Therefore, on behalf of the Town of Belchertown, we request that the Environmental Appeals Board and the Office of Administrative Appeals find that the Agencies have improperly denied the proposed alternative limits and direct U.S. EPA Region I and the Massachusetts Department of Environmental Protection to modify the Permit as requested.

Appeal Item 5 - Part I A.1 - Page 3 of 9 - - Whole Effluent Toxicity Limits (LC50 and C-NOEC)

Tighe & Bond Comment of Draft Permit:

"The draft permit contains the same requirements for toxicity testing as contained in the current permit issued in 1999 and also as proposed in the September 2000 draft permit. These include requirements for both acute and chronic toxicity testing four times per year. A review of the last two years of toxicity test results indicates that treated effluent is generally not toxic as measured by both acute and chronic toxicity tests. Based on the review of the toxicity test data, on behalf of the Town of Belchertown, we request that the permit limitations and the monitoring requirements for acute [note typographical error should read chronic] toxicity be eliminated from the permit

Suggested modifications to the permit are as follows:

On page 3 of 10, delete the line beginning C-NOEC.

On page 4 of 10, delete footnote 7.

On page 4 of 10, edit footnote 8 to read as follows:

"8. The permittee shall conduct modified acute toxicity tests four times per year using the species Ceriodaphnia dubia. The permittee shall conduct modified acute toxicity tests during the second week of the month (any day of the week but no later than Friday) of March, June, September, and December. Results are to be submitted by the 30th day of the month after the sample i.e. April, July, October and January. See Toxicity Test Procedure and Protocol on Attachment A."

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"A review of whole effluent toxicity test results from 2003 and 2004 indicates that while permit limits were met, the discharge is not free from chronic toxic effects. On two occasions the chronic permit limit was just met and on several other occasions when the chronic limit was met, there was some indication of chronic toxicity at dilutions less than the permit limit but a clear endpoint was obscured by significant variability amongst replicates. Given the lack of any significant dilution in the receiving water and the potential for POTWs to cause in stream toxicity, the requirements for toxicity testing are retained in the Final Permit in accordance with the EPA Policy for Development of Water Quality-Based Permit Limitations for Toxic Pollutants, 40 FR 9016 (March 9, 1984), and the MADEP Toxics Control Policy. These policies require acute toxicity limits of $LC50 = 100\%$ and chronic toxicity limits of $NOEC =$ in stream waste concentration (1/dilution factor)."

Appeal - the Agencies incorrectly state that the referenced policies require acute and chronic toxicity limits. The policies provide recommendations as to how limits should be developed if they are to be included as permit conditions. Numerous POTW do not have chronic toxicity limitations included in their discharge permits.

The Agencies' comment that the on two occasions the chronic toxicity limit was "just" met. The current permit requires a chronic no observable effect concentration (C-NOEC) of 94 percent effluent. This includes no observed mortality and no decrease in the fecundity of the test organisms at this concentration. A sample having absolutely NO toxic effects would have only a slightly higher C-NOEC (100 percent effluent). To consistently pass a C-NOEC limit of 94 percent over a two year period adequately demonstrates that the effluent is consistently free from toxic effects. The variability observed in the test results was not significant enough to invalidate the test results. Variability in biological testing data can reasonably be expected to occur. This variability should not be used as a basis for denying the requested permit modification. The acute toxicity testing that is required as a separate permit requirement will continue to provide a sound measure for identifying any changes in effluent toxicity characteristics.

Conclusion: On behalf of the Town of Belchertown, we request that the Environmental Appeals Board and the Office of Administrative Appeals direct U.S. EPA Region I and the Massachusetts Department of Environmental Protection to modify the Final NPDES Permit to eliminate the chronic toxicity testing requirements from the permit.

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Request for Stay

In requesting the appeal of the permit conditions as well as a formal hearing from the Office of Administrative Appeals on the above referenced NPDES Permit, we also, hereby request a stay of the permit requirements for mass based limits for BOD, TSS and phosphorus as well as copper effluent concentrations and chronic toxicity monitoring requirements. If additional information, not already available, becomes available regarding this subject before such time as a hearing may be granted, we hereby request to be allowed to submit such additional information for purposes of conducting the hearing.

Statement to Provide Testimony

As required by 40 CFR 124.74(c)(4), the requester agrees to make available to appear and testify:

- (i) the requester
- (ii) all persons represented by the requester
- (iii) all officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

On behalf of the Town of Belchertown Department of Public Works, we respectfully request that you grant the appeal and hearing on the above-referenced NPDES Permit. If you have any questions regarding this appeal or require additional information, please contact either Mr. Steven Williams, director of Public Works, Town of Belchertown at (413) 323-0415 or the undersigned at (413) 572-3236.

Very truly yours,

TIGHE & BOND, INC.



Omer H. Dumais, Jr., P.E.

Vice President

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