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**MIRICK O'CONNELL**  
ATTORNEYS AT LAW  
MIRICK O'CONNELL DEMALCO & LOUGEE LLP

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**VIA FEDERAL EXPRESS**

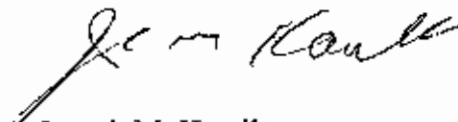
U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

Re: Westborough Treatment Plant  
Permit No.: MA0100412  
Appeal No.: NPDES 05-07  
Appeal No.: NPDES 05-08

Dear Sir/Madam:

Enclosed for filing is the Westborough Treatment Plant Board's opposition to Conservation Law Foundation's motion for leave to intervene.

Very truly yours,

  
Joseph M. Hamilton

JMH/kjg  
Enclosure

cc: Peter Shelley, Esq.  
Donald L. Anglehart, Esq.  
Kenneth L. Kimmell, Esq.  
Samir Bukhari, Esq.  
Rebecca Cutting, Esq.  
David W. Owen

**MIRICK O'CONNELL**

WESTBOROUGH, MA  
508-898-1501 • FAX 508-898-1502

100 FRONT STREET  
WORCESTER, MA 01608-1477  
508-791-8500 • FAX 508-791-8502

BOSTON, MA  
617-261-2417 • FAX 617-261-2418

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[www.MirickOConnell.com](http://www.MirickOConnell.com)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD

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Westborough Treatment Plant  
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NPDES Permit No. MA0100412  
NPDES Appeal No. 05-07  
NPDES Appeal No. 05-08

WESTBOROUGH TREATMENT PLANT BOARD'S OPPOSITION TO THE  
CONSERVATION LAW FOUNDATION'S MOTION FOR LEAVE TO INTERVENE

I. NATURE AND STATUS OF PROCEEDINGS

The Westborough Treatment Plant Board (the "Board") has been issued NPDES Permit No. MA0100412 (the "Permit"). The Board timely filed a request for review of certain conditions contained in the Permit. In addition, The Organization for the Assabet River ("OAR") has also filed a petition for review.

By motion dated October 11, 2005, the Conservation Law Foundation ("CLF") filed a motion to intervene in the proceedings regarding the Board's petition, as well as OAR's petition.<sup>1</sup> The Board opposes CLF's motion to intervene in these proceedings on the grounds that the regulations governing these appeals do not permit CLF to intervene.

II. ARGUMENT

A. CLF Is Not Permitted To Intervene In An Appeal Of A  
NPDES Permit.

CLF's motion to intervene must be denied for the simple reason that intervention is not permitted in this case.

The procedure for appealing a NPDES permit is governed by 40 C.F.R. §124. These regulations do not permit any intervention in a pending appeal of a NPDES permit. Indeed,

<sup>1</sup> CLF has also sought to intervene in the pending petitions regarding the City of Marlborough's Westerly Wastewater Treatment Plant and the Town of Maynard's Water Pollution Control Facility.

§124.19 permits an appeal of a NPDES permit only by those persons “who filed comments on that draft permit or participated in the public hearing ...” CLF neither filed comments on the draft permit nor participated in the public hearing. Indeed, it makes no allegation in its motion that it did so.

Section 124.19 also provides for an appeal by any person who failed to file comments or failed to participate in the public hearing on the draft permit only to the extent of changes from the draft to the final permit decision. However, such an appeal must be filed within thirty days after service of the notice of the Regional Administrator’s action. Even if CLF was challenging changes from the draft permit to the final permit (which it is not), its motion for leave to intervene is untimely. As stated in CLF’s motion, the Permit was issued on May 26, 2005.

The Practice Manual of the Environmental Appeals Board reflects these regulatory requirements. There is no provision in the Practice Manual for intervention in appeals governed by 40 C.F.R. §124 (see Practice Manual, Section III).

B. The Intervention Allowed By The Consolidated Rules Of Practice Is Inapplicable.

The Environmental Appeals Board Practice Manual and 40 C.F.R. §22 does provide for intervention to a proceeding in specific circumstances. Each of these circumstances concerns adjudicatory proceedings under defined circumstances, none of which apply here. See §22.1. Again, the Environmental Appeals Board Practice Manual distinguishes between those proceedings governed by the Consolidated Rules of Practice and those applying to permit appeals governed by 40 C.F.R. §124 (see Practice Manual, Section II.I.2.). The Practice Manual also sets forth the scope of the Consolidated Rules of Practice, which does not encompass the pending appeals (Practice Manual, Section II.B.).


Finally, even under the Consolidated Rules of Practice the party requesting intervention must demonstrate that its interests are not adequately represented by existing parties. See 40 C.F.R. §22.11(a). To the extent CLF wishes to respond to the Board's appeal of the Permit, it has made no showing that its interests are not adequately represented by Region I of the Environmental Protection Agency. To the extent that it seeks to buttress OAR's challenge to the Permit, it has failed to make any showing that OAR is inadequate to represent its own interests in connection with its appeal.

### III. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Conservation Law Foundation's motion for leave to intervene must be denied.

WESTBOROUGH TREATMENT  
PLANT BOARD

By its attorney,

  
\_\_\_\_\_  
Joseph M. Hamilton  
Mirick, O'Connell, DeMallie & Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
Phone: (508) 791-8500  
Fax: (508) 791-8502

Dated: 10/21/05

CERTIFICATE OF SERVICE

I, Joseph M. Hamilton, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, first class mail, postage prepaid, to the following:

Peter Shelley, Esq.  
John A. Pike, Esq.  
John L. Davenport, Esq.  
Conservation Law Foundation  
62 Summer Street  
Boston, MA 02110-1016

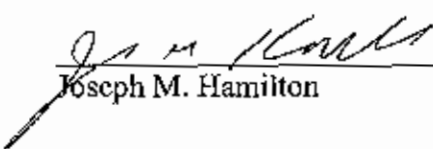
Donald L. Angelhart, Esq.  
Gadsby Hannah LLP  
225 Franklin Street  
Boston, MA 02110

Rebecca Cutting  
Senior Counsel  
Department of Environmental Protection  
Office of General Counsel  
One Winter Street  
Boston, MA 02108

Kenneth L. Kimmell, Esq.  
Bernstein, Cushner & Kimmell, P.C.  
585 Boylston Street, Suite 400  
Boston, MA 02116

Samir Bukhari, Esq.  
Office of Regional Counsel  
U.S. EPA, Region 1  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023

David W. Owen  
Interim Town Administrator  
Office of the Department of Public Works  
Municipal Building, 195 Main Street  
Maynard, MA 01754

  
\_\_\_\_\_  
Joseph M. Hamilton

Dated:

10/21/05