

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

**UXBRIDGE WASTEWATER TREATMENT
FACILITY
UXBRIDGE, MASSACHUSETTS**

NPDES Permit No. MA 0102440

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) **NPDES Appeal No. 13-**_____
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PETITION FOR REVIEW BY THE TOWN OF UXBRIDGE

John F. Shea, Esq.
Peter F. Durning, Esq.
MACKIE SHEA O'BRIEN, P.C.
420 Boylston Street, 5th Floor
Boston, Massachusetts 02116
(617) 266-5700
(617) 266-5237 (fax)
jfs@lawmso.com
pfd@lawmso.com

Counsel for the Petitioner Town of Uxbridge

TABLE OF CONTENTS

Table of Authorities	4
Table of Attachments	4
I. Introduction	5
II. Threshold Procedural Requirements.....	6
III. Background	6
IV. Parallel Proceedings	8
V. Terms and Provisions Appealed.....	8
A. U.S. EPA’s Decision to Impose Unreasonable Requirements in the Permit and then Require Uxbridge to Seek an Enforcement Order Is Poor Public Policy and an Abuse of Discretion.	9
B. U.S. EPA Abused Its Discretion When it Created a Two-Tiered Permit Based on an Arbitrary Design Flow and Tied the Application of the Limits in the Tiers to Changes in Flow Rather than a Compliance Schedule that Incorporated Uxbridge’s Planning and Improvements Schedule.	10
C. Under the Initial Tier of Reduced Flow Effluent Limits, U.S. EPA Imposed Limits that the Current Facility Is Not Designed to Achieve.	13
1. The Permit Imposed E.Coli and Entrococci Limits on Uxbridge without any Data to Demonstrate that the Facility Can Achieve the Limits.	14
2. The Phosphorus Requirements in the Reduced Flow Effluent Limits will Require Significant Additional Measures to Remove only Marginally More Phosphorus than the Facility Can Achieve.....	15
D. Under the Higher Tier Effluent Limits, U.S. EPA Requires a Dramatic Reduction of Phosphorus to 0.2 mg/L that Is Not Feasible for the Facility.	16
E. U.S. EPA Imposed an 8 mg/L Effluent Limit for Nitrogen in the Higher Tier that Uxbridge Cannot Achieve Without a Compliance Schedule for Significant Facility Improvements..	17

F. U.S. EPA Imposed Effluent Limits on Aluminum Without Regard to the Possibility of “Naturally Occurring” Aluminum in the Blackstone River or to the Use of Aluminum as a Phosphorus-Reducing Agent.	18
G. U.S. EPA’s Mandate to Conduct a Comprehensive Wastewater Management Plan Is Vague and Imposes Considerable Additional Costs.	18
H. The Chlorination System Alarm and Collection System O & M Plan Should be Tied to the Planning and Design Process Rather than Independent Permit Conditions.	19
I. U.S. EPA Should Maintain the Toxicity Testing Schedule from the Existing Permit.....	20
J. U.S. EPA Should Keep the Language Regarding the Impact of Natural Causes on Effluent pH from the Existing Permit.	20
VI. Relief Sought	21
Statement of Compliance with Word Limitation	22
Certificate of Service	23

TABLE OF AUTHORITIES

M.G.L. c. 21, § 26-53	8
40 C.F.R. § 124.19(a)(2)	6
40 C.F.R. § 124.19(a)(4)	9
314 CMR 3.00	8
314 CMR 4.04(5)(c)	16

TABLE OF ATTACHMENTS

- A. Summary of the Terms and Provisions from NPDES Permit No. MA 0102440 Appealed by Town of Uxbridge
- B. Letter from EPA to the Town of Uxbridge, June 18, 2013.
- C. Letter from MassDEP to U.S. EPA Region 1 with Water Quality Certification, May 30, 2013.
- D. Final NPDES Permit, June 18, 2013.
- E. NPDES Part II Standard Conditions (January 2007)
- F. U.S. EPA Region 1's Fact Sheet for NPDES Permit No. MA 0102440, September 2012.
- G. U.S. EPA Region 1 Freshwater Acute Toxicity Test Procedure and Protocol
- H. U.S. EPA's Response to Comments on Uxbridge Wastewater Treatment Facility.
- I. Town of Uxbridge's comment letter to U.S. EPA on the draft permit, November 16, 2012.

I. INTRODUCTION

In the National Pollutant Discharge Elimination System (“NPDES”) permit the United States Environmental Protection Agency Region 1 (U.S. EPA) issued to the Town of Uxbridge (“Uxbridge” or the “Town”), No. MA 0102240 (“Permit”),¹ U.S. EPA imposed effluent limits that the agency knew the Uxbridge Wastewater Treatment Facility (“Facility”) could not meet on the effective date of the Permit, and declined to provide a timetable for achieving compliance. In the agency’s response to Uxbridge’s comments on the draft permit, U.S. EPA stated that it “expects that a reasonable compliance schedule will be developed and incorporated into an EPA enforcement order after the issuance of the permit.” It was an abuse of discretion and poor public policy to issue a permit with unachievable effluent limits without a timetable for achieving compliance, in order to compel Uxbridge into immediate violation of the Permit, requiring an enforcement order to establish a reasonable and achievable compliance schedule.

Though Uxbridge is perplexed by the timing and process for obtaining an enforcement order from EPA, the Town is agreeable to entering a settlement agreement that includes a compliance schedule for a modified NPDES Permit with U.S. EPA and Massachusetts Department of Environmental Protection (“MassDEP”) to resolve certain objectionable aspects of the Permit. Until such an agreement is reached, Uxbridge must pursue this appeal to stay certain provisions pending review so as to remain in compliance with the Permit.

¹ U.S. EPA issued the Permit on June 18, 2013, and Uxbridge received it via certified mail on June 21, 2013. A copy of the relevant parts of the Permit package that was sent to Uxbridge is attached as Exhibit B – H, including the transmittal letter stamped received on June 21, 2013 as Exhibit B. The text of the Permit is attached as Exhibit D.

II. THRESHOLD PROCEDURAL REQUIREMENTS

The Town of Uxbridge satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, to wit:

- a. Uxbridge has standing to petition for review of the permit decision because it participated in the public comment period on the permit. See 40 C.F.R. § 124.19(a)(2). A copy of Uxbridge's November 16, 2012 comment letter is attached as Exhibit I.
- b. The issues raised by Uxbridge in this petition were raised during the public comment period and therefore were preserved for review. See Exhibit I.

III. BACKGROUND

The Town of Uxbridge operates a 2.5 million gallon per day secondary wastewater treatment facility that serves a population of approximately 6,620 persons. In addition to household users, there is only one industrial user currently contributing a small amount of non-contact cooling water to the Facility. The collection system for the Facility consists of separate sanitary sewers. There are no known combined sewers or combined sewer overflows that contribute to the Facility. The Facility accepts several thousand gallons per day of septage from within Uxbridge and from other communities.

The Facility has been authorized under a NPDES permit issued on September 30, 1999. That permit was effective on October 30, 1999. On April 26, 2004, Uxbridge filed a timely application for an individual NPDES permit. The MassDEP and EPA co-issued a draft NPDES permit to Uxbridge on September 21, 2012 with an accompanying Fact Sheet for public comment. When it received the draft NPDES permit, Uxbridge was in the process of conducting a wastewater facilities planning project.

Uxbridge submitted comments on the draft NPDES permit to EPA on November 16, 2012 (hereinafter the “Uxbridge Comment Letter”). In its comments, Uxbridge presented its position that the new NPDES permit should take into account the Town’s planning process and requested consideration of a tiered permit that would consider the results of the current planning process that may demonstrate lower interim flows. In its comments, Uxbridge addressed 13 aspects of the draft permit including, but not limited to:

1. concerns that the existing Facility was not designed to treat and has no data demonstrating that the Facility can meet certain new effluent limits including limits on E. Coli and Enterococci bacterial levels, total phosphorus levels, and total nitrogen levels;
2. express requests that Uxbridge be allowed to complete its wastewater facilities planning project before new requirements take effect;
3. the imposition of concentration limits in addition to load limits;
4. the imposition of effluent limits on aluminum without considered the amount of “naturally occurring” aluminum in the Blackstone River;
5. the significant costs that this small municipal treatment facility would have to incur in order to achieve the lower average phosphorus levels proposed in the draft permit; and
6. the imposition of nitrogen limits that are more stringent than the requirements for towns in Rhode Island that are downstream from Uxbridge and contribute effluent to Narragansett Bay, despite evidence of the significant, voluntary, and successful efforts that Uxbridge undertook to improve nitrogen removal.

In addition to specific elements of the draft permit, Uxbridge called attention to the fact that the Town has limited property and financial resources to address the broad mandates from U.S. EPA. In particular, Uxbridge stressed that the Town could not simultaneously conduct long-range planning activities and respond to short-term permit requirements.² Many of the public comments expressed similar concerns regarding the heavy financial burden that Uxbridge would

² Uxbridge Comment Letter, ¶ 13.

face with increased permit demands.³ Based upon a preliminary design evaluation, the consultant to Uxbridge estimated the necessary upgrades will cost \$30 million.

MassDEP issued a Water Quality Certification to U.S. EPA on May 30, 2013 stating that the proposed permit met Massachusetts' water quality standards. On June 18, 2013, U.S. EPA and MassDEP co-issued the Permit, along with the original Fact Sheet⁴ and U.S. EPA's responses to comments by Uxbridge and others⁵. Uxbridge received the final NPDES Permit via certified mail on June 21, 2013.⁶ The Permit will become effective on September 1, 2013, except for the provisions stayed by virtue of this appeal.

IV. PARALLEL PROCEEDINGS

In addition to this petition, Uxbridge has appealed two state components of this permitting process: (a) the Water Quality Certificate issued by MassDEP to U.S. EPA on May 30, 2013; and (b) the Surface Water Discharge Permit ("SWDP") issued by MassDEP on June 18, 2013 pursuant to M.G.L. c. 21, § 26-53 and 314 CMR 3.00.

V. TERMS AND PROVISIONS APPEALED

The Environmental Appeals Board ("EAB") can review and remand permits where the Regional office of U.S. EPA made determinations based on clearly erroneous findings of fact or conclusions of law, or where the permit appeal raises important matters of public policy or

³ Response to Comments, p. 14, Comments D1 from Senator Richard T. Moore ("But, given the state of the economy, and given the current condition of the Federal Treasury, I'm concerned that neither the Federal government nor the communities along the river have the resources necessary to do all that might be required by the permit, certainly within a short period of time.")

Response to Comments, p. 17-18, Comment D3 from Mark Andrews ("The other thing that you have to understand to us, is we always have a very tight school budget and municipal budget.").

⁴ A copy of the Fact Sheet is attached as Exhibit F.

⁵ A copy of U.S. EPA's Response to Comments is attached as Exhibit H.

⁶ Exhibit B.

constitutes an abuse of discretion. 40 C.F.R. 124.19(a)(4). As set forth in greater detail below, Uxbridge seeks review only of certain provisions of the NPDES Permit where U.S. EPA abused its discretion or set permit provision that are contrary to sound public policy. Uxbridge has identified each of those provisions in Attachment A and hereby incorporates Attachment A as part of this Petition. Uxbridge believes that all provisions of the NPDES Permit which are not appealed by this Petition or included in Attachment A are severable from the appealed provisions and would be effective on September 1, 2013.

A. U.S. EPA's Decision to Impose Unreasonable Requirements in the Permit and then Require Uxbridge to Seek an Enforcement Order Is Poor Public Policy and an Abuse of Discretion.

In its Response to Comment A1, U.S. EPA acknowledges that the existing Facility was not designed to and cannot meet certain effluent limits in the Permit. The Response directs Uxbridge to seek a "reasonable compliance schedule" through an enforcement order.⁷ The Permit and Response to Comments are silent regarding how or when Uxbridge could initiate a proceeding that will result in an "enforcement order." During and after the comment period on the draft permit, U.S. EPA invited and encouraged Uxbridge to appeal the final Permit in order to obtain an achievable compliance schedule. The imposition of a requirement to obtain an "enforcement order" is not a trivial matter. Certain advantageous funding opportunities that might be available to Uxbridge, including 0% loans available through the MassDEP State Revolving Fund program for nutrient removal work, could be foreclosed if the Town is subject to an enforcement order. Issuing a permit that forces the Applicant to violate the permit so as to merit an enforcement order and compliance schedule is unsound public policy, especially as to

⁷ Response to Comments, p. 2.

communities that are engaging in deliberate planning to improve treatment facilities. Forcing Uxbridge to appeal the final Permit in order to negotiate a compliance schedule has resulted in significant legal and consultant fees which could have been available for discussions with U.S. EPA and MassDEP on a compliance schedule or otherwise used for facility planning work. As such, requiring an appeal has resulted in an unnecessary expenditure of limited funds. Through this appeal, Uxbridge seeks relief from this predicament.

B. U.S. EPA Abused Its Discretion When it Created a Two-Tiered Permit Based on an Arbitrary Design Flow and Tied the Application of the Limits in the Tiers to Changes in Flow Rather than a Compliance Schedule that Incorporated Uxbridge's Planning and Improvements Schedule.

In the Uxbridge Comment Letter, the Town formally informed U.S. EPA that it was in the midst of a wastewater facilities planning project.⁸ Uxbridge requested that U.S. EPA consider issuing a tiered permit. The primary concern was that Uxbridge is a small community with limited financial resources. Uxbridge is committed to improving its existing wastewater treatment facility, but it is concerned that the introduction of additional permit requirements to be addressed in the short-term could deplete limited resources – including property on which to expand the Facility – to complete the required improvements.⁹

Uxbridge requested that U.S. EPA issue a permit with two tiers for different annual average flows. The purpose of this request was to maintain the design flow of the plant while recognizing that the planning process may result in a lower design flows for the short-term. Uxbridge anticipates that a flow evaluation may yield a maximum potential flow that is consistent with the current design flow of the Facility, but it is possible that the flow projection

⁸ Uxbridge Comment Letter, initial paragraph.

⁹ Uxbridge Comment Letter, ¶¶ 9 and 13.

may be lower than the current design flow. Allowing the planning process to proceed would likely provide some savings in the money that Uxbridge has to spend on an upgrade of the Facility. Uxbridge cannot afford to over-design an upgraded treatment system.

In addition to infrastructure costs, permit design flows are significant as a driver of regulatory controls. For instance, three other towns on the Blackstone River – Douglas, Hopedale and Upton – have very low design flows that are were deemed *de minimis* and not subject to numeric nitrogen effluent flows.¹⁰ Currently, the Uxbridge system is discharging less than 1.0 MGD.¹¹ Even though the Uxbridge system has very low actual flow, it has the largest design flow of the three smallest POTWs on the Blackstone River that recently received nitrogen effluent limits.¹² Indeed, out of Uxbridge, Grafton and Northbridge, Uxbridge has “the lowest actual flow, lowest effluent DIN (dissolved inorganic nitrogen), and lowest nitrogen load of all three.”¹³ Despite its very low actual flows and low nitrogen load, U.S. EPA established a numeric total nitrogen effluent limit for Uxbridge in Table 1.A.1.b based on a design flow of 2.5 MGD.

In the Permit, U.S. EPA established a two tiered permit system, with an initial tier based on an arbitrary design flow of 1.25 MGD and a second tier based on the design flow of 2.5 MGD. The first tier flow was arbitrarily selected and does not reflect a reasoned estimate of the anticipated flows at from the Facility. In its Response to Comments, U.S. EPA did not provide a

¹⁰ Fact Sheet, p.23.

¹¹ Response to Comment A9, p.6.

¹² Response to Comment A9, p.6

¹³ Response to Comment A9, p.6

justification for the first tier design flow of 1.25 MGD beyond the explanation that it is “50% of the facility design flow.”¹⁴

In addition to the arbitrary nature of the first tier flow, U.S. EPA did not provide a compliance schedule to govern when Uxbridge would be subject to the higher tier effluent limits. As a result, Uxbridge may be subject to the requirements of the higher flow tier in Table 1.A.1.b before the Town completes its planning, design, and construction of the facility modifications.

For example, with respect to total nitrogen, Uxbridge is not subject to a numeric effluent control under the first tier of the Permit, but since the tiers are tied to flow increases rather than timed to correspond to improvements benchmarks, Uxbridge may have to comply with the second tier requirements before the Town completes its improvement design and implementation.

Under the first tier, Uxbridge is only required “to reduce the discharge of total nitrogen to the maximum extent possible using all available treatment equipment in place at the facility.”¹⁵ This accommodation recognizes the considerable success that Uxbridge has achieved in reducing nitrogen in its discharge and the fact that the Facility has a very low actual flow of 0.9 MGD. While this provision allows Uxbridge to continue its nitrogen reducing initiatives, the Permit also imposes a strict effluent limit in Section 1.A.1.b if the actual flows exceed 1.25 MGD. It is possible that the Facility could reach this trigger before it completes the assessment and implementation of design improvements. Given that U.S. EPA recognizes that the Facility cannot meet the nitrogen effluent limits and the Facility would require improvements to meet the numeric limits, the application of the limits should be tied to a reasonable compliance schedule.

¹⁴ Response to Comment A9, p. 8.

¹⁵ Permit, Footnote 17, page 9 of 18.

In the absence of such a schedule, Uxbridge could become subject to the strict effluent limits well before the Facility is capable of meeting the Permit requirements.

Uxbridge respectfully objects to the arbitrary determination of the first tier flow and requests that the EAB issue an order revising the Permit to incorporate a schedule to allow Uxbridge sufficient time to complete its planning process, as well as to design, bid, and construct the necessary improvements to the Facility *before* being subject to more stringent effluent limits. The Town requests the final permit include a first tier flow that is defined by the planning process and is not arbitrarily set.

C. Under the Initial Tier of Reduced Flow Effluent Limits, U.S. EPA Imposed Limits that the Current Facility Is Not Designed to Achieve.

In its Response to Comment A1, U.S. EPA expressly states that it “does not expect that the existing facility can meet the new limits for total phosphorus or total nitrogen.”¹⁶ U.S. EPA goes further to state “to the extent that new permit limits cannot be met by the existing facility EPA understands that the Town will need time to complete the planning process, design, bid and construct necessary improvements to meet the new limits, and expects that a reasonable compliance schedule will be developed and incorporated into an U.S. EPA enforcement order after the issuance of the permit.”

While Uxbridge appreciates that U.S. EPA recognizes there must be relief from the effect of some of the effluent limits in the Permit, it was an abuse of discretion to issue the Permit as written with immediately unachievable limits. In the event that Uxbridge, U.S. EPA and MassDEP are unable to agree on a “reasonable compliance schedule,” in part based on affordability, Uxbridge will be in jeopardy of non-compliance with these onerous effluent limits

¹⁶ Response to Comments, p.2.

that exceed the design parameters of the existing Facility, including the effluent limits for bacteria and phosphorus.

1. The Permit Imposed E.Coli and Entrococci Limits on Uxbridge without any Data to Demonstrate that the Facility Can Achieve the Limits.

U.S. EPA abused its discretion in setting average monthly and maximum daily E.Coli and Enterococci bacterial concentration limits in the Reduced Flow Effluent Limits.¹⁷ In its comments on the Draft Permit, Uxbridge stated that the “existing facility was not designed to treat to the bacteria levels contained in the new permit (E.Coli and Enterococci).”¹⁸ Uxbridge also noted that there were no “data to demonstrate the facility is capable of achieving the new limits.” In its Response to Comments, U.S. EPA acknowledges that the existing Facility was not designed to treat to the limits in the Permit.¹⁹ The agency states that it “expects that the existing facility will be able to meet the new limits based on the experience of other facilities in Massachusetts,” but this observation does not establish that the Facility can comply with the new requirements, or that the flows and treatment technologies at the other Massachusetts facilities are comparable to Uxbridge.

In its analysis of the bacteria effluent limits, U.S. EPA did not conduct any testing of bacteria in the effluent from the Facility. In the absence of site-specific data, U.S. EPA assumed that Uxbridge contributed some portion of the bacterial load found at the Rhode Island state line and used mathematical models to create the effluent limit for Enterococci.²⁰ The E.Coli effluent

¹⁷ Permit, Part 1.A.1.a.

¹⁸ Uxbridge Comment Letter, ¶ 1.a.

¹⁹ Response to Comment A1, page 2 of 18.

²⁰ Fact Sheet, p. 8-10.

limits were taken from Massachusetts Water Quality Standards.²¹ Since the effluent from the Facility has not been tested for bacteria, there is little information about the feasibility of the Facility meeting these effluent criteria. Although U.S. EPA agrees to address the Facility's non-compliance with the bacteria limits in a schedule in an enforcement order, the need for these additional measures demonstrates that the Permit was not a proper exercise of the agency's discretion.

2. The Phosphorus Requirements in the Reduced Flow Effluent Limits will Require Significant Additional Measures to Remove only Marginally More Phosphorus than the Facility Can Achieve.

Like the effluent limits for bacteria, the NPDES Permit imposes stringent limits on phosphorus in the Reduced Flow Effluent Limits that go into effect for the Facility on September 1, 2013. This limit is excessive because, as U.S. EPA acknowledges, the existing facility cannot meet the new limits for total phosphorus. In U.S. EPA's Response to Comment A1, the agency stated that it "does not expect that the existing facility can meet the new limits for total phosphorus."²² Though its current permit allows up to 1 mg/L of phosphorus in the effluent, Uxbridge is able to achieve an average effluent phosphorus level of less than 0.6 mg/L. The total phosphorus limit in the new Reduced Flow Effluent Limit tier is set at 4.2 lbs/day, which equates to 0.4 mg/L at a flow of 1.25 MGD.²³ To maintain the current level of 0.6 mg/L, Uxbridge relies on certain phosphorus-reducing agents that contain aluminum. While the Facility is under the phosphorus limits in its current permit, the Town's success mitigating phosphorus concentrations may be diminished if Uxbridge is forced to comply with aluminum reductions, as discussed in

²¹ Fact Sheet, p.8

²² Response to Comments, p. 2.

²³ Permit, Table 1.A.1.a, page 3 of 18.

Section V.F. below. U.S. EPA has not established that Uxbridge can achieve an additional 0.2 mg/L reduction down to 0.4 mg/L under the Reduced Flow Effluent Limits with the existing Facility – let alone without the aid of aluminum-containing reduction agents.

D. Under the Higher Tier Effluent Limits, U.S. EPA Requires a Dramatic Reduction of Phosphorus to 0.2 mg/L that Is Not Feasible for the Facility.

To achieve the target phosphorus effluent limits in the higher design flow tier, Uxbridge would have to reduce the concentration of phosphorus down to just 0.2 mg/L from the existing permit's allowance of 1.0 mg/L.²⁴ A reduction of this magnitude is not practicable and would require significant additional resources.²⁵ While the Facility's current performance for phosphorus reduction is below the current effluent limit, Uxbridge warned in its comments that the cost from reducing the phosphorus concentration in the Facility's effluent from 0.6 mg/L down to just 0.2 mg/L would impose considerable hardship.²⁶

Such a low limit for phosphorus is not consistent with the Massachusetts standard of imposing the "highest and best practical treatment" for nutrients.²⁷ The Massachusetts water quality standards for nutrients do not contain any specific numerical criteria for phosphorus. Rather, the state regulations for publicly-owned treatment works recommend that permits require the highest and best practical treatment. 314 CMR 4.04(5)(c). Given the comparatively small operating size of the Facility and the fact that other wastewater treatment plants along the Blackstone River in Massachusetts contribute significantly more phosphorus to the river, as

²⁴ Uxbridge Comment Letter, ¶ 11.

²⁵ Uxbridge Comment Letter, ¶ 11.

²⁶ Uxbridge Comment Letter, ¶ 1.b.

²⁷ See 314 CMR 4.05(5)(c).

measured at the Rhode Island state line, the imposition of such a stringent requirement on Uxbridge is not justified. It is not equitable for U.S. EPA to demand that a small town with a minor contribution to the Blackstone River should be forced to pay disproportionately larger costs that would be required to reduce the phosphorus limit down to 0.2 mg/L as compared to imposing significant reductions at larger facilities with more resources to achieve lower effluent limits. The imposition of such a low effluent limit for phosphorus at the Facility is impractical and inequitable.

Lastly, as noted in Section V.B. above, since the trigger for the higher effluent flow limits is not tied to the planning process, it is possible that with just a 0.4 MGD increase in flow Uxbridge would have to meet the very low phosphorus effluent limit in the higher tier. Given that U.S. EPA acknowledges that the current Facility can not meet the phosphorus limits in the Permit, the Town would have to undertake some Facility modification to achieve the required phosphorus reduction even before it completes planning for and implementing facility improvements.

E. U.S. EPA Imposed an 8 mg/L Effluent Limit for Nitrogen in the Higher Tier that Uxbridge Cannot Achieve Without a Compliance Schedule for Significant Facility Improvements.

As discussed in Section V.B. above, U.S. EPA recognized the significant efforts that Uxbridge has been making to address nitrogen in its effluent. The Permit does not impose a numeric effluent limit for nitrogen in the Reduced Flow Effluent Limit.²⁸ While Uxbridge is subject only to the requirement that it “reduce the discharge of total nitrogen to the maximum extent possible” under the lower tier, it has a numeric effluent limit for total nitrogen at 8 mg/L

²⁸ Permit, Table 1.A.1.a, page 3 of 18.

in the higher tier. Like the effluent limit for phosphorus, U.S. EPA did not establish that Uxbridge can achieve this level of nitrogen reduction with its current Facility. Indeed, part of the reason that U.S. EPA anticipates that Uxbridge will require an enforcement order is because the agency knows that the Town cannot comply with the upper level effluent limits. Uxbridge requests that compliance with any numeric effluent limit for nitrogen be tied to planned improvements through a compliance schedule, rather than forcing the Town to be subject to an enforcement order.

F. U.S. EPA Imposed Effluent Limits on Aluminum Without Regard to the Possibility of “Naturally Occurring” Aluminum in the Blackstone River or to the Use of Aluminum as a Phosphorus-Reducing Agent.

U.S. EPA approved the NPDES Permit with a 1.81 lbs/day limit on aluminum, despite the absence of any data regarding the extent of “naturally occurring” aluminum in the Blackstone River. This aluminum limit was set even though MassDEP is in the process of assessing the possibility of developing site specific criteria for aluminum. The aluminum limit is onerous because Uxbridge, like many other treatment facilities, relies on certain phosphorus reduction chemicals that contain aluminum. The new aluminum effluent limit imposed by U.S. EPA will make compliance with the phosphorus reductions even more challenging.

G. U.S. EPA’s Mandate to Conduct a Comprehensive Wastewater Management Plan Is Vague and Imposes Considerable Additional Costs.

In section 1.A.2.g of the Permit, EPA expressly conditions the Permit on the requirement that the Town “shall conduct a planning process leading to the completion of a Comprehensive Wastewater Management Plan (CWMP) that shall include consideration of whether a design flow smaller than 2.5 MGD may be appropriate within the planning horizon of the plan.”²⁹ The

²⁹ Permit, p. 10 of 18.

Permit also requires that the “CWMP shall be completed no later than four (4) years from the effective date of the permit and shall be submitted with the reapplication of the next permit reissuance.”

The fact that Uxbridge is engaged in a facilities planning project demonstrates that the Town understands the importance of proper infrastructure planning. While Uxbridge is amenable to conducting all appropriate additional planning and design activities to assess the proper design flow for the system, Uxbridge respectfully objects to a specific planning process, like a CWMP, being made an express condition of the Permit without understanding purpose of its inclusion, the expected scope (if beyond that which is stated in the Permit), and where the CWMP fits in the overall compliance schedule. As discussed elsewhere, Uxbridge is a town of limited resources.³⁰ Uxbridge does not have the time, money, or manpower to perform multiple critical system assessments and needs projections. Uxbridge is willing to work with the agencies to develop the proper assessment approach to determine the proper design flow and treatment equipment, but requires an understanding of the process.

H. The Chlorination System Alarm and Collection System O & M Plan Should be Tied to the Planning and Design Process Rather than Independent Permit Conditions.

The Permit contains certain requirements that conflict with the Uxbridge’s anticipated planning activities. These conditions include the installation of a chlorination system alarm and the development and implementation of a Collection System Operation and Maintenance Plan. Uxbridge contends these elements should be tied to its current planning and improvement activities. The Permit should be amended to reflect that these events will be incorporated into

³⁰ See Fn 2 and 3 supra.

the Town's planning schedule without compliance deadlines keyed to the issuance date of the Permit.

I. U.S. EPA Should Maintain the Toxicity Testing Schedule from the Existing Permit.

Under its current permit, Uxbridge performs toxicity testing during the quarters ending June 30 and December 31. Uxbridge is concerned that having all toxicity testing in the Blackstone River watershed in April and October, as required in the Permit, may cause difficulties with laboratory availability and increased testing costs, and requests that EPA reinstate the prior schedule.

J. U.S. EPA Should Keep the Language Regarding the Impact of Natural Causes on Effluent pH from the Existing Permit.

In its Comments on the draft permit, Uxbridge noted that U.S. EPA proposed to eliminate the phrase "unless these values are exceeded due to natural causes" qualifying the pH limits in the Permit."³¹ U.S. EPA decided to remove the phrase because the agency claimed that, since Uxbridge had no excursions from the pH limit in the past, it did not need the protective measure going forward.³² Uxbridge states that the existing permit language provides needed assurance to the operator that it will not be subject to permit violations due to unusual natural events, and respectfully requests that the EAB restore that protection in a modified permit.

³¹ Uxbridge Comment Letter, ¶ 2.

³² Response to Comments, p. 2-3.

RELIEF SOUGHT

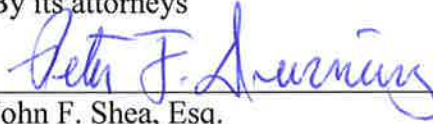
Uxbridge respectfully seeks a full review by the EAB of the appealed terms and provisions of the final NPDES permit. After such review, Uxbridge requests:

1. The opportunity to present an oral argument in this proceeding and a briefing schedule for this Appeal to assist the EAB in resolving the issues in dispute;
2. A remand to U.S. EPA Region 1 with an order to issue an amended NPDES permit that conforms to EAB's findings on the terms and provisions appealed by Uxbridge; and
3. Any such other relief as may be appropriate under the circumstances.

Respectfully submitted:

TOWN OF UXBRIDGE

By its attorneys



John F. Shea, Esq.

Peter F. Durning, Esq.

MACKIE SHEA O'BRIEN, P.C.

420 Boylston Street, 5th Floor

Boston, Massachusetts 02116

(617) 266-5700

(617) 266-5237 (fax)

jfs@lawmso.com

pfd@lawmso.com

July 19, 2013

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

I hereby certify that this Petition for Review, including all relevant portions, contains less than 40,000 words.

Dates: July 19, 2013


Peter F. Durning

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Town of Uxbridge's Petition for Review in the matter of Uxbridge Wastewater Treatment Facility, NPDES Permit No. MA 0102440, were served by United States First Class Mail on the following persons, this 19th day of July, 2013:


H. Curtis Spalding
Regional Administrator
USEPA REGION 1 - New England
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Ken Moraff, Acting Director
Office of Ecosystem Protection
USEPA REGION 1 - New England
5 Post Office Square - Suite 100
Boston, MA 02109-3912

David Ferris, Director
Office of Watershed Management
Bureau of Resource Protection
MassDEP
One Winter Street
Boston, MA 02108

Susan Murphy
USEPA REGION 1 - New England
5 Post Office Square
Mail Code: OEP
Boston, MA 02109-3912

Benn S. Sherman, DPW Director
Town of Uxbridge
147 Hecla Street
Uxbridge, MA 01569


Peter F. Durning