November 15, 2011

Curt Spalding, Regional Administrator
EPA New England, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dear Regional Administrator Spalding:

Please accept this letter on behalf of Conservation Law Foundation ("CLF") and the many organizations and individuals listed below. Together, we are dedicated to protecting and restoring the health of our waterways and estuaries, and to the implementation and enforcement of local, state, and federal clean water laws. Commitment to this work is essential for the Blackstone River and Narragansett Bay to attain water quality standards, and if we are to save an ecosystem on the brink of collapse.

We are writing in response to the July 20, 2011, letter[1] to EPA in which Massachusetts' Department of Environmental Protection Commissioner Kenneth Kimmell (MADEP) asks for a permit modification for the Upper Blackstone Water Pollution Abatement District (UBWPAD) that "would allow additional time, established through a compliance schedule, to use 'new scientific tools' to evaluate and adjust the currently-established permit limits where appropriate."[2]

This delay, first requested by the UBWPAD, would unnecessarily delay implementation of the National Pollutant Discharge Elimination System (NPDES) permit limits for the UBWPAD's treatment facility until multiple agencies can reach "common ground" on "appropriate science-based limits."[3]

The approach supported by UBWPAD, and now MADEP, is contrary to the clear standards established by the Clean Water Act, which require that EPA sets limitations on nitrogen and phosphorous pollution stringent enough to assure compliance with the water quality standards for Narragansett Bay and the tributaries into which the UBWPAD's pollution discharge flows.

More importantly, the approach advocated by MADEP will not result in the changes needed to achieve and maintain clean and usable water. Time is of the essence, and the UBWPAD proposal would unnecessarily delay both the implementation of statutorily mandated pollution controls and the already long overdue recovery of Narragansett Bay.

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[1] Despite the fact that Rhode Island waters are directly and severely impacted by both point source and non-point source pollution from facilities and operations in Massachusetts, the State of Rhode Island was not copied on the July 20, 2011 MADEP letter to EPA.

[2] *July 20, 2011 Letter from Kimmell to Spalding, p.1.*

[3] *July 20, 2011 Letter from Kimmell to Spalding, p.1.*

For this reason, the only acceptable compliance schedule is immediate implementation of the new permit limits.

EPA should safeguard the future of the Blackstone River and Narragansett Bay by denying UBWPAD's and MADEP's request for more delay as unspecified "new scientific tools" are developed and implemented.

Since the 18th century the Blackstone River has borne the brunt of pollution in one of the most heavily industrialized parts of the country. In 1900, the Massachusetts' Department of Public Health found that "the condition of the Blackstone River is offensive throughout its course, from Worcester to the state line at Blackstone. The condition of the stream is likely to grow worse until effective measures are completed for removing from the river much of the pollution which it now receives."[4]

By 1990, despite some improvements in the years after passage of the Clean Water Act, the Blackstone River was "the most polluted river in the country with respect to toxic sediments," according to EPA.[5]

Today, there is little dispute about the need to reduce nutrient pollution when as much as 56 million gallons of wastewater per day are discharged into the already-impaired headwaters of the Blackstone River by UBWPAD's treatment facility. The treatment plant "is the dominant source of nitrogen loadings to the Blackstone River," which ultimately flows into Narragansett Bay, according to EPA.[6]

According to EPA's Fact Sheet, "it is clear that eutrophication in the Seekonk and Providence Rivers and Narragansett Bay has reached a level where it is adversely affecting the composition of fish and wildlife; adversely affecting the physical, chemical, or biological integrity of the habitat; interfering with the propagation of fish and wildlife; adversely altering the activities of fish and wildlife; and causing dissolved oxygen to drop well below 5.0 mg/L." MADEP acknowledges as much in its letter, stating that "the parties do not appear to disagree with the need for nutrient reductions; rather, it is the level of reduction where disagreement exists."[7]

But despite the acknowledged nutrient pollution problem, MADEP suggests further delay before permit implementation, and ultimately calls into question the permit limits by asking whether additional investments of capital to achieve the permit limits are justified.[8] The undersigned acknowledge that there are many sources of pollution that contribute to the eutrophication of Narragansett Bay, but those sources have been finding the resources, complying under orders, and working more effectively and cooperatively to achieve the common goal of restoring the waters of the Blackstone.

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[4] Kerr, Meg. "Rhode Island Sea Grant Fact Sheet: The Blackstone River."
[5] "Blackstone River Valley," Special Resource Study, National Park Service, 2011.
[6] NPDES permit, JA 1341
[7] July 20, 2011 *Letter from Kimmell to Spalding*, at p.2.
[8] July 20, 2011 *Letter from Kimmell to Spalding*, at p.3.

In support of its argument MADEP points to an EPA Science Advisory Board report on how to advise states as they develop water quality nutrient standards. But it is not relevant in the Commonwealth, where EPA, not Massachusetts, is responsible for setting permit limits for the UBWPAD facility. In any case, when establishing the permit limit for the facility, EPA used an approach that substantively achieves the objectives outlined in the SAB report, for instance by using a weight-of-evidence approach.[9]

MADEP also challenges the scientific tools used by EPA to set the 2008 permit limits. However, regardless of the scientific tools used to evaluate the Blackstone River the outcome will be the same: If the Blackstone and Narragansett Bay are to become and to remain usable by wildlife, fish, anglers, swimmers and shell fishermen, the UBWPAD facility must immediately and significantly reduce its output of nitrogen and phosphorous pollution.

Several designated representatives from the undersigned organizations would appreciate the opportunity to meet with you and your staff at your earliest convenience to discuss generally, the steps we need to take together to restore the Blackstone and Narragansett Bay, and, specifically, EPA's position on MADEP's request. The effective and expeditious implementation of the 2008 permit limits is tremendously important to the organizations and individuals that have signed on to this letter.

Respectfully,

Conservation Law Foundation
By Tricia K. Jedele, Vice President
Director of CLF-RI

Audubon Society of Rhode Island
By Lawrence Taft, Executive Director

Blackstone River Coalition
By Donna Williams, President

Blackstone River Watershed Council/Friends of the Blackstone
By John Marsland, President

Blackstone Valley Tourism Council
By Robert Billington, President

Charles River Watershed Association
By Robert L. Zimmerman, Jr. Executive Director

Clean Water Action
By Sheila Dormody, New England Co-Director

[9] SAB report at p. 18

Environment Council of Rhode Island
By Tricia K. Jedele, President

Friends of the Moshassuck
Greg Gerritt, Founder

Ipswich River Watershed Association
Kerry Mackin, Executive Director

Massachusetts Rivers Alliance
Julia Blatt, Executive Director

Organization for the Assabet, Sudbury, and Concord Rivers
Alison Field-Juma, Executive Director

Save The Bay
By Jonathan Stone, Executive Director

Trout Unlimited, Northern RI Chapter 737
Robert Teeden, President

Individually,

Mr. Peter Coffin
Ms. Louise Durfee
Mr. Roland C. Gauvin
Mr. Thomas P.I. Goddard
Mr. Robert Leeson
Mr. Richard Lisle
Mr. William Mott
Ms. Peggy Sharpe
Mr. Peter Trafton

cc: Kenneth L. Kimmell, Commissioner, MADEP
Janet Coit, Director, RIDEM