

---

---

No. 12-797

IN THE  
**Supreme Court of the United States**

---

UPPER BLACKSTONE WATER POLLUTION  
ABATEMENT DISTRICT,  
*Petitioner,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

---

On Petition for a Writ of Certiorari to  
The United States Court of Appeals for the First Circuit

---

**BRIEF OF *AMICUS CURIAE***  
**NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES**  
**IN SUPPORT OF PETITION FOR A WRIT OF**  
**CERTIORARI**

---

*Of Counsel*

NATHAN GARDNER-ANDREWS  
NATIONAL ASSOCIATION OF  
CLEAN WATER AGENCIES  
1816 Jefferson Place, NW  
Washington, DC 20036  
(202) 833-2672

February 1, 2013

KARMA B. BROWN

*Counsel of Record*

HUNTON & WILLIAMS LLP  
2200 Pennsylvania Ave., NW  
Washington, DC 20037  
kbbrown@hunton.com  
(202) 955-1500

BROOKS M. SMITH  
HUNTON & WILLIAMS LLP  
951 East Byrd Street  
Richmond, VA 23219-4074  
(804) 788-8200

*Counsel for Amicus Curiae*  
*National Association of Clean*  
*Water Agencies*

---

---



**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES.....	v
INTERESTS OF <i>AMICUS CURIAE</i> .....	1
STATEMENT OF THE CASE .....	6
REASONS FOR GRANTING THE PETITION .....	9
I. Allowing Permit Writers to Derive Numeric Limits from Narrative Standards Without Regard to Relevant Local Information Is Inconsistent with EPA’s Own Regulations, Creates a Conflict Among the Circuits, and Exposes Public Clean Water Agencies Across the Country to the Threat of Misguided and Wasteful Spending.....	9
CONCLUSION .....	14



## TABLE OF AUTHORITIES

	Page
 <b>CASES</b>	
<i>American Paper Inst. v. U.S. EPA</i> , 996 F.2d 346 (D.C. Cir. 1993) .....	2, 10
<i>In re Upper Blackstone Water Pollution Abatement Dist.</i> , Nos. 08-11 to -18, 09-06, 2010 WL 2363514 (EAB May 28, 2010) .....	8, 10
<i>Simpson Tacoma Kraft Co. v. Dep’t of Ecology</i> , 835 P.2d 1030 (Wash. 1992) .....	2
<i>Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA</i> , 690 F.3d 9 (1st Cir. 2012), <i>petition for cert. filed</i> Dec. 21, 2012 (No. 12-797) .....	6, 7, 8, 9
 <b>STATUTES</b>	
33 U.S.C. § 1311(b)(1)(C) .....	12
33 U.S.C. § 1342 .....	3
33 U.S.C. § 1342(a)(3) .....	7
33 U.S.C. § 1342(b)(1)(B) .....	7
 <b>REGULATIONS</b>	
40 C.F.R. § 122.6 .....	7
40 C.F.R. § 122.21(d) .....	7
40 C.F.R. § 122.44(d) .....	7
40 C.F.R. § 122.44(d)(1) .....	4, 12
40 C.F.R. § 122.44(d)(1)(ii) .....	11

# TABLE OF AUTHORITIES—Continued

	Page
40 C.F.R. § 122.44(d)(1)(vi) .....	9
40 C.F.R. § 122.44(d)(1)(vi)(B) .....	10, 11
<b>RULES</b>	
U.S. Sup. Ct. R. 37.2(a) .....	6
U.S. Sup. Ct. R. 37.6.....	1
<b>MISCELLANEOUS</b>	
EPA, EPA 440/5-86-001, <i>Quality Criteria for Water 1986</i> (May 1, 1986), available at <a href="http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/upload/2009_01_13_criteria_goldbook.pdf">http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/upload/2009_01_13_criteria_goldbook.pdf</a> .....	12
EPA, EPA 822-R-98-002, <i>National Strategy for the Development of Regional Nutrient Criteria</i> (June 1998), available at <a href="http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/strategy/#strategy">http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/strategy/#strategy</a> .....	10
EPA <i>et al.</i> , <i>Clean Water Action Plan: Restoring and Protecting America's Waters</i> (Feb. 1998), available at <a href="http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockkey=20004J7S.txt">http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockkey=20004J7S.txt</a> .....	10
Letter from Albert Ettinger & Cindy Skrukrud to Bob Mosher, Illinois EPA (Aug. 15, 2012).....	13

## TABLE OF AUTHORITIES—Continued

	Page
Letter from Dr. Deborah L. Swackhamer, Chair, EPA Sci. Advisory Bd. & Dr. Judith L. Meyer, Chair, Ecological Processes & Effects Comm., Sci. Advisory Bd., to Lisa P. Jackson, Adm’r, EPA, “SAB Review of Empirical Approaches for Nutrient Criteria Derivation” (Apr. 27, 2010), <i>available at</i> <a href="http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/\$File/EPA-SAB-10-006-unsigned.pdf">http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/\$File/EPA-SAB-10-006-unsigned.pdf</a> .....	12
Memorandum from Nancy K. Stoner, Acting Assistant Adm’r, Office of Water, EPA, to Reg’l Adm’rs, Regions 1-10, “Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions” (Mar. 16, 2011), <i>available at</i> <a href="http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf">http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf</a> .....	3
Order of Court, <i>Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA</i> , Nos. 11-1474, 11-1610 (1st Cir. Sept. 25, 2012).....	8

**TABLE OF AUTHORITIES—Continued**

	Page
Petition for a Writ of Certiorari, <i>Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA</i> , (U.S. Dec. 21, 2012) (No. 12-797).....	8



## INTERESTS OF *AMICUS CURIAE*

The National Association of Clean Water Agencies (“NACWA”) is a national trade organization representing the interests of the nation’s publicly owned wastewater and stormwater utilities with nearly 300 public utility members nationwide.<sup>1</sup> NACWA is the leading advocate for responsible national policies that advance clean water and create a healthy balance between investment and environmental benefit. Because of their dual mandate to protect the environment and provide cost-effective service to their ratepayers, NACWA’s public clean water agency members must make smart investments to provide clean water at the best value.

This case presents a question of exceptional national importance, and one that cuts to the core of NACWA’s mission. That question is how to properly derive numeric permit limits based on narrative water quality standards. If these kinds of limits are derived without regard to local conditions, then they will not be well tailored to address the actual problem (if any) in the receiving waterbody and may lead to misguided and wasteful spending.

---

<sup>1</sup> Pursuant to Rule 37.6 of this Court, *amicus curiae* NACWA states that its counsel authored this brief, and NACWA paid for it. This brief was not written in whole or in part by counsel for a party to these cases, and no one other than NACWA made a monetary contribution to its preparation. The Upper Blackstone Water Pollution Abatement District (“District”) is one of NACWA’s members, but the District has not committed funds towards preparation of this brief.

The U.S. Environmental Protection Agency's ("EPA") regulations answer the question in this case by underscoring the necessity of considering not just "off the shelf" literature values, but also relevant local information, such as actual water quality conditions and the different uses designated for protection in the receiving waterbody. The U.S. Court of Appeals for the First Circuit misinterpreted those regulations, and, in so doing, created a conflict with a longstanding decision of the U.S. Court of Appeals for the District of Columbia Circuit. See *Am. Paper Inst. v. U.S. EPA*, 996 F.2d 346, 352 (D.C. Cir. 1993) (holding that EPA must "tailor the federal standard to any relevant site-specific circumstances in order to effectuate the intent of a particular state narrative criterion") (citing *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 835 P.2d 1030 (Wash. 1992)).

In this case, the question of how to properly derive numeric permit limits arises in the context of nutrients, which present special regulatory and technical considerations. Nutrients are necessary to promote healthy ecosystems by supporting the growth of aquatic plants, which provide food and habitat for fish and other organisms that live in water. But too many nutrients can cause or contribute to adverse effects, such as algae blooms, which deplete dissolved oxygen and reduce water clarity.

Controlling nutrients to a healthy level (i.e., not too many and not too few) is a fundamental challenge for states across the country. And this challenge is made all the more difficult because nutrients have different effects in different waterbodies, depending on the particular physical,

chemical and biological conditions that may exist. For example, the causal link between nutrients and their effects in the water environment is dependent on, and in some cases confounded by, a range of other critical factors, such as light, flow, temperature and background water chemistry (all of which are inherently site-specific).

Moreover, the sources of nutrients are diffuse and diverse, making them difficult to identify and control in a fair and equitable manner (these sources include, without limitation, urban runoff, air deposition, agricultural livestock activities, row crop runoff, and regulated industrial and municipal wastewater dischargers).<sup>2</sup>

NACWA's public clean water agency members operate pursuant to National Pollutant Discharge Elimination System ("NPDES") permits, which regulate and control the amount of nutrients and other pollutants that may be lawfully discharged. Through the NPDES permit process, EPA and delegated state permitting authorities assign limits or conditions tailored to meet the technology- and water quality-based objectives of the Clean Water Act ("CWA"), 33 U.S.C. § 1342. For NPDES permits to be defensible, the permit writer must be able to show that the limits it selects are *necessary* to meet

---

<sup>2</sup> Memorandum from Nancy K. Stoner, Acting Assistant Adm'r, Office of Water, EPA, to Reg'l Adm'rs, Regions 1-10, "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions," at 1 (Mar. 16, 2011), *available at* [http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo\\_nitrogen\\_framework.pdf](http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf).

applicable water quality standards. *See* 40 C.F.R. § 122.44(d)(1). The limits imposed through NPDES permits can be costly to achieve and take years to implement. Therefore, it is critical to NACWA's members that all NPDES permit decisions be grounded in relevant facts, supported by the record (including relevant local information), and *necessary* to meet applicable water quality standards. *See* 40 C.F.R. § 122.44(d)(1).

At the time of the permitting action that is the predicate for this case, the District was substantially invested in, and progressing toward the completion of, a significant capital upgrade project to reduce nutrients according to the terms and schedule of a prior permitting action and related consent order. Rather than consider the specific quality of the discharge (after the upgrade-in-progress) or the specific quality of the receiving water, in the context of relevant and site-specific biological, chemical, and physical properties, EPA issued a new permit that changed the District's nutrient limits, in effect compelling a second and even larger capital upgrade. In issuing the new permit, EPA relied on an "off the shelf" literature value that was wholly disconnected from the discharge or waterbody at issue and wholly inadequate to demonstrate that the contested nutrient limits were, in fact, *necessary* based on relevant local conditions. To meet the nutrient limits set in the permit under review, the District will need to undertake an additional \$180-\$200 million in further upgrades.

These costs are clearly significant to both the District and other NACWA members across the nation who are concerned about the potential impact

of the First Circuit's decision. NACWA's members have spent, or are committed to spend, billions of dollars in infrastructure improvements and other measures to reduce nutrients. They have an abiding and fundamental interest in ensuring that the nutrient limits assigned in NPDES permits, like those at issue here, are rational and supported by sound science, including relevant local information. If EPA fails to consider relevant local information (as it failed to do here), it will also be ignoring the value and impact of the investments made by local clean water agencies, like the District, because those investments have a direct impact on receiving water quality conditions.

NACWA brings a unique national perspective to this case, representing the interests of nearly 300 public utility members nationwide. The Court's review of the First Circuit's decision, and EPA's underlying action, will have a significant and direct impact on NACWA and its members as they consider future infrastructure improvements and other related measures. How EPA derives numeric permit limits from narrative water quality standards has profound implications not just for the District, but also for publicly owned wastewater and stormwater utilities all across the country. Resolving the conflict that has arisen because of the First Circuit's decision and a contrary holding by the District of Columbia Circuit is of critical national importance to NACWA and its members.

All parties have consented to the filing of this Brief.<sup>3</sup>

### STATEMENT OF THE CASE

*Amicus curiae* NACWA files this brief in support of the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in *Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA*, 690 F.3d 9 (1st Cir. 2012), *petition for cert. filed* Dec. 21, 2012 (No. 12-797), filed by the District.

The First Circuit wrongly decided a question of exceptional national importance by misinterpreting EPA's regulations on how to properly derive numeric permit limits based on narrative water quality standards. The error below creates a conflict with the District of Columbia Circuit's *American Paper* decision, and raises profound implications for NACWA members across the country who are trying to make smart, economically responsible investments in clean water that address *actual* local needs as opposed to wholly disconnected, "off the shelf," literature values.

NPDES permits must meet the technology- and water quality-based objectives of the CWA. For permits to achieve these objectives, they must be developed based on the facts of each particular discharge (i.e., the quality and characteristics of the

---

<sup>3</sup> Pursuant to Rule 37.2(a) of this Court, NACWA provided the parties with timely notice of its intent to file an *amicus curiae* brief. The parties' letters of consent have been filed with the Clerk of Court.

discharge evaluated against the quality, characteristics, and regulatory performance standards of the receiving waterbody). 40 C.F.R. § 122.44(d). EPA's regulations call for permit writers to consider relevant local information, and such information is especially important in the context of nutrients, where actual effects in the receiving waterbody are dependent on a range of factors (including the nature and magnitude of the various nutrient inputs, as well as the site- and condition-specific factors that directly influence how nutrients are assimilated into the water environment). Simply put, different waterbodies can be "healthy" at different nutrient levels, depending on other critical assimilation factors such as light, flow, temperature and background water chemistry. As a result, there is no direct or consistent causal link between nutrients and their impact in the receiving water environment.

In this case, at the time of the contested permitting decision in 2008, the District was actively involved in a significant \$180 million capital upgrade project targeted to reduce nutrients in its discharge. As the District was moving forward with those upgrades, it submitted a timely application for renewal of its 2001 permit to EPA, pursuant to 40 C.F.R. § 122.21(d).<sup>4</sup> Rather than give itself time to

---

<sup>4</sup> The First Circuit erroneously interpreted the CWA and EPA's regulations and held that EPA had no authority to extend the five-year permitting cycle and instead must issue a new NPDES permit. 33 U.S.C. § 1342(a)(3), (b)(1)(B); *Upper Blackstone*, 690 F.3d at 21-22. But that conclusion was wrong. EPA's regulations at 40 C.F.R. § 122.6 provide a lawful and  
(continued ...)

consider the effects of the agreed-upon upgrades, EPA forged ahead with a new permit, with yet more stringent limits. These new limits will require a further \$180-\$200 million (over and above the \$180 million the District has just completed) and will eventually be passed on to the District's ratepayers. EPA derived the new limits without regard to actual conditions in the receiving waterbody, or improvement to those conditions that have resulted from the District's upgrades. *See, e.g.,* Pet. for a Writ of Cert., at 4, *Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA*, (U.S. Dec. 21, 2012) (No. 12-797).

The District objected to the new permit on the grounds (among others) that the new more stringent limits were set before the effectiveness of the facility upgrades on water quality could be evaluated and without any site-specific water quality data. EPA's Environmental Appeals Board ("EAB") upheld the permit decision, *see In re Upper Blackstone Water Pollution Abatement Dist.*, Nos. 08-11 to -18, 09-06, 2010 WL 2363514, at \*13 (EAB May 28, 2010), and the EAB's decision, in turn, was upheld by the First Circuit. *Upper Blackstone*, 690 F.3d 9 (1st Cir. 2012). The First Circuit subsequently denied Petitioner's motion for rehearing and rehearing en banc. Order of Court, *Upper Blackstone Water Pollution Abatement Dist. v. U.S. EPA*, Nos. 11-1474, 11-1610 (1st Cir. Sept. 25, 2012). *Amicus curiae* NACWA filed an *amicus curiae* brief in support of

---

commonly used mechanism for permitting authorities to extend the five-year cycle by continuing an expiring permit.



Upper Blackstone’s appeal at the First Circuit and also in support of Upper Blackstone’s motion for rehearing and rehearing en banc. The First Circuit favorably noted “the assistance provided by the *amici curiae* in this case.” *Upper Blackstone*, 690 F.3d at 19 n.17.

The First Circuit’s decision has broad national significance because clean water utilities across the country must comply with the NPDES permit limits established by EPA or delegated States. The First Circuit is also the first appellate court to address the derivation of numeric permit limits based on narrative water quality standards specifically for nutrients, and its erroneous findings have national implications. It is imperative that the Court grant the petition for a writ of certiorari to review the First Circuit’s decision and reinforce the necessity of considering relevant local information, consistent with EPA’s regulations, when permitting decisions are made.

## **REASONS FOR GRANTING THE PETITION**

### **I. Allowing Permit Writers to Derive Numeric Limits from Narrative Standards Without Regard to Relevant Local Information Is Inconsistent with EPA’s Own Regulations, Creates a Conflict Among the Circuits, and Exposes Public Clean Water Agencies Across the Country to the Threat of Misguided and Wasteful Spending.**

The First Circuit misinterpreted EPA’s regulations on how to properly derive numeric permit limits based on narrative water quality standards. 40 C.F.R. § 122.44(d)(1)(vi) “requires

NPDES permit writers to use one of three mechanisms to translate relevant narrative criteria into *chemical-specific* effluent limitations.” *Am. Paper*, 996 F.2d at 350 (emphasis in original). In the contested permitting action at issue here, EPA chose the second mechanism, which required it to “[e]stablish effluent limits on a case-by-case basis, using EPA’s water quality criteria ... supplemented where necessary by other relevant information.” 40 C.F.R. § 122.44(d)(1)(vi)(B); *In re Upper Blackstone*, 2010 WL 2363514. Having chosen that option, EPA may not simply use its off the shelf national recommendations,<sup>5</sup> but rather must supplement them with “other relevant information.” 40 C.F.R. § 122.44(d)(1)(vi)(B); *see also Am. Paper*, 996 F.2d at 352 (holding that the second mechanism “requires a permit writer to tailor the federal standard to any relevant site-specific circumstances in order to

---

<sup>5</sup> Many states, including Massachusetts, rely on general narrative statements in their water quality standards to determine and regulate unacceptable nutrient impacts. In 1998, the White House Clean Water Action Plan called on EPA to intercede, setting a goal that each state would incorporate numeric criteria for nutrients into their water quality standards. EPA *et al.*, *Clean Water Action Plan: Restoring and Protecting America’s Waters* (Feb. 1998), available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockkey=20004J7S.txt>. Since that time, EPA has disseminated a number of different technical guidance documents and recommendations for nutrients on a national, rather than site-specific, basis. *See, e.g.*, EPA, EPA 822-R-98-002, *National Strategy for the Development of Regional Nutrient Criteria* (June 1998), available at <http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/strategy/#strategy>.

effectuate the intent of a particular state narrative criterion”).

Supplementation “by other relevant information,” 40 C.F.R. § 122.44(d)(1)(vi)(B), is especially critical in the nutrient context because nutrient criteria and limits are not one-size-fits-all. Rather, to be meaningful, and to protect the specific uses assigned to a particular waterbody, those criteria and limits need to account for site- and condition-specific factors that directly influence how nutrients are assimilated into the water environment. For example, nutrient fate and transport are directly influenced by physical, chemical, and biological conditions as they exist in a particular waterbody. It would be impossible to meaningfully control the adverse impacts of nutrient over- or under-enrichment in such a waterbody without accounting for such conditions within the waterbody. In short, the “healthy” level of nutrients in one waterbody may be entirely different than another, and determining what is “healthy” is dependent on, and in some cases confounded by, a range of critical factors in addition to nutrients, such as light, flow, temperature and background water chemistry (all of which are inherently site-specific).

Here, rather than require EPA to follow its regulations and consider *relevant* local data regarding the discharge and its impact on actual water quality in the Blackstone River, 40 C.F.R. § 122.44(d)(1)(ii), the First Circuit effectively allowed EPA to look at a collection of “off the shelf” literature values, pick one such value from the so-called federal

“Gold Book,”<sup>6</sup> and then conclude that this value was the appropriate in-stream target for the river.<sup>7</sup>

A Gold Book or other literature value may be an acceptable starting point for deriving numeric nutrient limits, but it is incomplete and inadequate without due consideration of relevant local information showing actual cause and effect.<sup>8</sup> Moreover, such values alone fail to show that the limits derived by EPA are in fact necessary to meet applicable water quality standards in any particular waterbody (i.e., neither more nor less than necessary). 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1).

---

<sup>6</sup>EPA, EPA 440/5-86-001, *Quality Criteria for Water 1986* (May 1, 1986), available at [http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/upload/2009\\_01\\_13\\_criteria\\_goldbook.pdf](http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/upload/2009_01_13_criteria_goldbook.pdf).

<sup>7</sup> NACWA and others have long expressed concerns with the additional national guidance documents used by EPA to set the District’s permit limits. None of these documents properly account for the site-specific conditions present in the Blackstone River that EPA should have considered.

<sup>8</sup> See, e.g., Letter from Dr. Deborah L. Swackhamer, Chair, EPA Sci. Advisory Bd. (“SAB”) & Dr. Judith L. Meyer, Chair, Ecological Processes & Effects Comm., SAB, to Lisa P. Jackson, Adm’r, EPA, “SAB Review of Empirical Approaches for Nutrient Criteria Derivation,” at 21-22 (Apr. 27, 2010), available at [http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/\\$File/EPA-SAB-10-006-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/$File/EPA-SAB-10-006-unsigned.pdf) (underscoring the need for a direct and demonstrated causative relationship between stressor and response and cautioning against the experimental validation of such a relationship).

The First Circuit’s failure to require EPA to follow its regulations and consider data and information specific to the Blackstone River and the resulting conflict the decision has created with the D.C. Circuit support granting the District’s petition for a writ of certiorari. The necessity of considering relevant local information is a key issue, not just in this case, but nationwide. Most states still rely on narrative (as opposed to numeric) nutrient criteria, and EPA is pushing states to translate narrative nutrient criteria into numeric limits. Courts and stakeholders, including NACWA members, across the country are already looking at the First Circuit’s decision for instruction, if not binding authority.<sup>9</sup> By upholding EPA’s decision to not consider relevant local information, the First Circuit allowed EPA to ignore the value and impact of investments made by clean water agencies. Without this Court’s review, permitting authorities will be misdirected in their efforts to derive proper limits, and public clean water utilities will face the threat of spending limited

---

<sup>9</sup> The First Circuit’s opinion has been cited by nongovernmental organizations during negotiations with regulatory agencies for the proposition that 0.1 mg/L should be used as a default phosphorus effluent limit, *regardless of relevant local conditions*. Specifically, in an August, 2012 letter to Illinois EPA, a nongovernmental agency states “[i]f a TMDL cannot be developed, a default effluent limit that is supported by the science and case law is 0.1 mg/L. See *Upper Blackstone Water Pollution Abatement District v. USEPA* (1<sup>st</sup> Cir. 2012) (upholds 0.1 mg/L effluent limit set by USEPA to restore a P-impacted water body).” Letter from Albert Ettinger & Cindy Skrukrud to Bob Mosher, Illinois EPA, at 5 (Aug. 15, 2012) (available upon request).

public dollars on investments that are not necessary to address local water quality concerns.

# CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the First Circuit should be granted.

Respectfully submitted,

*Of Counsel*

NATHAN GARDNER-  
ANDREWS  
NATIONAL ASSOCIATION OF  
CLEAN WATER AGENCIES  
1816 Jefferson Place, NW  
Washington, DC 20036  
(202) 833-2672

KARMA B. BROWN

*Counsel of Record*

HUNTON & WILLIAMS LLP  
2200 Pennsylvania  
Avenue, NW  
Washington, DC 20037  
kbbrown@hunton.com  
(202) 955-1500

BROOKS M. SMITH

HUNTON & WILLIAMS LLP  
951 East Byrd Street  
Richmond, VA 23219  
(804) 788-8200

February 1, 2013

*Counsel for Amicus Curiae  
National Association of  
Clean Water Agencies*