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

Filed
JUN 16 2016
Clerk, Environmental Appeals Board
INITIALS

In re: City of Taunton Department of Public Works Permit Nos. MA0100897	)	NPDES Appeal No. 15-08

ORDER DENYING RECONSIDERATION

On May 3, 2016, the Environmental Appeals Board ("Board") issued an Order Denying Review of a Clean Water Act National Pollutant Discharge Elimination System permit that the U.S. Environmental Protection Agency Region 1 ("Region") issued to the City of Taunton, Department of Public Works ("City"). The City timely filed a Motion for Reconsideration, which the Region opposes. Motion at 1.[1] The Board denies the City's Motion because the City fails to identify any demonstrable error in the Order Denying Review.

In filing a motion for reconsideration, a party "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 124.19(m). The Board reserves reconsideration for cases in which the Board has made a demonstrable error, such as a mistake on a material point of law or fact. A party should not regard reconsideration "as an opportunity to reargue the case in a more convincing fashion." *See In re Town of Newmarket,* NPDES Appeal No. 12-05, at 1-2 (EAB Jan. 7, 2014) (Order Denying Motion for Reconsideration) (relying on well-established Board precedent for the standard for

[1] The Region did not file a response to the City's Motion for Reconsideration.

reconsideration); *see also In re Energy Answers Arecibo,* PSD Appeal Nos. 13-05 to 13-09 (Apr. 11, 2014) (Order Denying Motion Requesting Extension of Time to File for Reconsideration); *In re Russell City Energy Ctr.*, PSD Appeal Nos. 10-1 through 10-05, at 2-3 (EAB Dec. 17, 2010) (Order Denying Motion and Supplemental Motion for Reconsideration and/or Clarification and Stay) ("[a] party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider")(citations omitted).

Federal courts employ a similar standard. *See, e.g., Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006) (explaining that "[t]he granting of a motion for reconsideration is 'an extraordinary remedy that should be used sparingly'") (citation omitted). As the U.S. Court of Appeals for the First Circuit has explained, to obtain relief in a motion for reconsideration, "the movant must demonstrate either that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." *Id.* (citation omitted). And, "[u]nless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party's case and rearguing theories previously advanced and rejected." *Id.* (*citing In re Sun Pipe Line Co.*, 831 F.2d 22, 24-25 (1st Cir. 1987)).

Here, the Region thoroughly reviewed the City's permit application. The depth of the Region's review is evidenced by an administrative record index that includes more than 400 entries and the Region's 165-pages of single spaced response to comments (responding to more than 600 pages of the City's timely submitted comments in addition to comments submitted by 9 other parties).

In the Order Denying Review, the Board fully considered all of the City's filings on appeal, oral arguments made before the Board, the voluminous administrative record of the

permitting decision, and the applicable statutory and regulatory provisions. The Board took great care in addressing the substance of the City's Petition, providing nearly 100 pages of well-considered analysis. Based on that careful review, the Board either found no clear error or abuse of discretion with respect to the issues the City raised in its Petition or found that the City had failed to meet threshold requirements for review.

Following well-established precedent, the Board limited its review to issues raised by the City during the public comment period, and rejected arguments to reopen the record because the City failed to identify substantial, new questions regarding the Permit that were not already considered by the Region. The Board further declined to find clear error on the many technical issues the City raised, noting that Board precedents assign a heavy burden to petitioners seeking review of such issues. The Board concluded that the City's Petition failed to address the Region's response to its timely filed comments (citing documents without analysis does not suffice); and that the City further failed to show clear error or an abuse of discretion, simply by putting forth a different opinion or alternate theory on a technical issue.

In its Motion, the City does not address either the well-established precedent that guided the Board's decision or the Board's detailed analysis of the issues the City raised in its Petition. The City attempts to demonstrate error by noting that the Board did not acknowledge one of the regulatory provisions cited once in its Petition (and only as general support for an argument that the Board did address) and that the Board failed to consider another regulatory provision that the City never cited in its Petition or Reply. *See* Motion for Reconsideration at 6 n.1, 8. These two regulatory provisions, however, do not call into question the Board's rationale for denying review of the City's Petition and do not otherwise demonstrate error warranting reconsideration by the Board.

Beyond that, the City makes only general allegations of clear error, expresses disagreement with the Board's conclusions, and largely reiterates the same arguments made in its Petition, Reply, and prior motions. But the City fails to demonstrate that the Board made any demonstrable error on a material point of law or fact. The Board thus denies the City's Motion for Reconsideration.

So ordered.[2]

ENVIRONMENTAL APPEALS BOARD

Dated: 6/16/2016

By: Mary Beth Ward

Mary Beth Ward
Environmental Appeals Judge

[2] The three-member panel deciding this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward. *See* 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Denying Reconsideration* in the matter of City of Taunton Department of Public Works, NPDES Appeal No. 15-08, were sent to the following persons in the manner indicated:

By First Class Certified Mail, Return Receipt Requested:
John C. Hall
Hall & Associates
1620 I Ste. NW, Suite 701
Washington, DC 20006

By EPA Pouch Mail:
Samir Bukhari
Michael Curley
Assistant Regional Counsels
U.S. EPA Region 1
5 Post Office Square (Mail Code: ORA 18-1)
Boston, MA 02109-3912

By Interoffice Mail:
Lee Schroer
Office of General Counsel, Water Law Office
U.S. EPA
1200 Pennsylvania Ave., NW (Mailcode: 2355A)
Washington, DC 20460

Dated: JUN 16 2016

Annette Duncan
Secretary