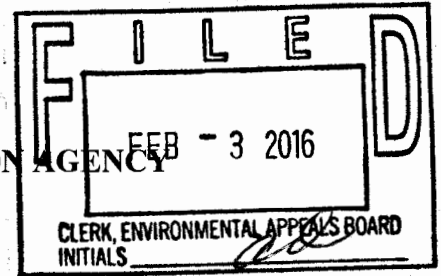


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

City of Taunton)

Department of Public Works)

Permit No. MA0100897)

NPDES Appeal No. 15-08

**ORDER GRANTING CITY OF TAUNTON PERMISSION
TO DISPLAY CERTAIN MATERIALS BY POWERPOINT DURING ORAL
ARGUMENT**

On January 27, 2016, the City of Taunton (“City”) filed an “Unopposed Motion to Allow Use of PowerPoint to Display Excerpts of the Record During Oral Argument.” The City’s Motion follows an exchange of emails with the Clerk of the Board regarding the technology that is available for use during oral argument, and what specifically the City may present during oral argument. In that email exchange, the Clerk of the Board advised that Counsel for the City need not seek advance permission to present “specific pages of existing documents from the administrative record” for the permit in this case; however, if the City wished to present newly-created materials (such as a PowerPoint) incorporating or referencing charts or other excerpts of documents from the administrative record, then the City must file a motion seeking permission to do so and attach those materials to its motion. In response, Counsel for the City represented that it planned to present excerpts from “the existing administrative record” at argument in its PowerPoint and sought the Region’s consent to its request. The Region responded that it did not object to the City’s motion “to use visual excerpts from the administrative record” during oral argument. Region’s Response, Att. 1. The City’s Motion followed.

In its Motion, the City states that the Clerk informed the parties that they could present “specific pages of the administrative record and previous filings” using the Board’s courtroom equipment. City’s Motion at 3. Rather than use that equipment to display those existing documents, the City instead seeks permission to use a newly-created PowerPoint to present “exact quotations of language and replications of charts/graphs (or excerpts thereof) already found in the governing administrative record and/or filings in this appeal’s docket.” *Id.* The City further states that its Motion is unopposed.

With its Motion, the City includes five sample slides of the type of excerpts to be used rather than the “actual presentation materials,” stating that it does not wish to “prematurely reveal the precise content of the City’s oral argument to EPA.” *Id.* at 3 n.2. Three of the five sample slides consist of excerpts from administrative record documents. Two of the five slides include excerpts from documents that are not part of the administrative record for this permit decision. The first is an excerpt from a document that is the subject of the Region’s pending Motion to Strike. *See* City’s Motion, Ex. 1, Slide 5 (reproducing a chart from attachment 4 (Kirby Declaration) to the City’s Reply). The second is an excerpt from a document that is the subject of the City’s pending Motion to Supplement the Administrative Record. *See* City’s Motion, Ex. 1, Slide 3 (reproducing a FOIA response by the Region that was attached to the City’s Petition).

The Region objects to the City’s use of Slides 3 and 5 and any other slides that excerpt material from documents not in the administrative record for the permit at issue in this case. The Region argues that the City’s presentation should be limited to excerpts of those materials in the administrative record for the permit, as previously communicated by the City, and consented to by the Region. Presenting excerpts of materials not in the administrative record, argues the

Region, would “engender confusion and disputes at argument” and prejudice the Region by magnifying materials for the Board that the Region has argued are not properly before the Board in the first instance. Region’s Response at 3-4.

In reply, the City states that it does not intend to present materials that have been excluded by the Board. Reply at 2. The City refers to the following statement in its initial email to the Clerk to demonstrate that it “made explicit mention” of its intent to include materials contained in filings to the Board that are not in the administrative record: “All of the materials presented/referenced will be those already in EPA’s permit record and highlighted in the various filings to the Board.” Reply at 3 (and Ex. 1 at 2).

The Clerk did not communicate to the parties that they could present pages of previous filings in this appeal’s docket using the Board’s courtroom equipment. Additionally, the Region did not oppose the City’s motion, but only to the extent the City seeks to display excerpts of materials in the administrative record for the permit. The Region opposes the display of excerpts of materials from filings in this appeal’s docket to which it has objected. Further, presenting materials from filings in this appeal’s docket objected to by the Region does present the potential for confusion and disputes at argument, which would undermine the “efficient, fair, and impartial adjudication” of the issues in this case. 40 C.F.R. § 124.19(n). Finally, the Board generally discourages a party’s use of a PowerPoint presentation during oral argument because the primary purpose of oral argument is to allow the Board to engage with the parties and to ask questions regarding arguments that have been set forth in the briefs, and not to receive a presentation.

However, the Board also wants to provide the parties with some latitude in deciding how to prepare for and present their case at argument, as they deem most appropriate on behalf of their client. Accordingly, the Board grants the City permission to use PowerPoint to display

excerpts of exact quotations of language and replications of charts/graphs (or excerpts thereof) (i) already found in the governing administrative record as well as (ii) materials included with the City's Petition and Reply for which the Board's decisions on the Motion to Strike and Motion to Supplement remain pending. This grant of permission to display the latter materials has no bearing on the Board's future ruling on those pending Motions. Finally, the City is directed to provide, at least 30 minutes prior to argument, hard copies in color of the PowerPoint presentation it will be displaying at argument (two copies for the Region and five copies for the Clerk). This will allow the Region the opportunity to review and, if necessary, to inform the Board if it objects to any materials it views as inappropriate in a manner that does not prejudice the City and minimizes the risk of confusion and disputes during oral argument.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 2/3/16

By: Mary Kay Webb for
Mary Beth Ward
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Granting City of Taunton Permission To Display Certain Materials by PowerPoint During Oral Argument* in the matter of the City of Taunton Department of Public Works, NPDES Appeal No. 15-08, were sent to the following persons in the manner indicated:

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Dated: FEB - 3 2016



Annette Duncan
Secretary