



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
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BOSTON, MA 02109-3912

OFFICE OF THE  
REGIONAL ADMINISTRATOR

December 29, 2014

Mayor Thomas C. Hoye, Jr.  
City of Taunton  
141 Oak Street  
Taunton, MA 02780

Re: Correspondence dated November 19, 2014

Dear Mayor Hoye:

In response to your letter of November 19, 2014, I have previously indicated our willingness to meet with the City again at our offices in Boston. I understand you will have the City's special counsel John Hall present, and the Region will also have counsel present at that meeting. To schedule that meeting please contact Nancy Grantham of my office at (617) 918-1101. Please note that EPA Headquarters will not be attending that meeting and has requested that the Region respond to this request.

First, however, I must correct the characterization in your letter regarding the outset of the September 10 meeting at Taunton City Hall. The statement that I "refused to meet" unless the City's special counsel was excluded from the meeting is incorrect. Rather, upon learning of Mr. Hall's presence I and my staff members noted that we had asked the City for a list of participants in the meeting, and had received a list that did not include Mr. Hall or any other special or outside counsel. Relying on the list that had been provided by the City, the Region did not have its own attorney present for the meeting.

This situation resulted in considerable consternation, as I would be limited in what would be discussed in a meeting where the City had outside representation but EPA's counsel was not present. I stated this to you directly, noting that we were prepared to go forward with the meeting but that it would be a different meeting than the free exchange we had hoped for. Upon your offer to have Mr. Hall sit outside, I reiterated that I was not demanding that action, although again it would be a different meeting with Mr. Hall present. I also offered to meet with the City and Mr. Hall at another time when EPA's counsel could be present. While it was unfortunate that the situation arose because of the incomplete participant list provided by the City, we did attempt to resolve it in a way that met the City's interests. Our offer to meet again with counsel present remains open and we are prepared to schedule that meeting forthwith.

Second, my staff and I clearly indicated in the meeting that the technical arguments over the permit analyses were the subject of an extensive and public administrative proceeding that included a 630 page comment package from the City, comments from numerous environmental

groups, and an extensive administrative record. In that context, and as stated at the meeting, it was not appropriate nor even possible to respond in detail to technical arguments in that meeting. In general, however, the Region stands by its conclusion that Massachusetts and Rhode Island water quality standards for nutrients and aesthetics are not being met due to nitrogen-driven cultural eutrophication in the Taunton River Estuary and Mount Hope Bay, and that cultural eutrophication has also contributed to violations of the numeric dissolved oxygen (“DO”) standards in these waters. The Region also stands by its conclusion that the Taunton WWTP’s nitrogen discharges, which represent about 14% of the total nitrogen load, “cause, have a reasonable potential to cause, or contribute” to nitrogen-related water quality violations in the Taunton River Estuary. The Region also disagrees with the speculation that other system improvements might have fixed the DO problem, based in large part on the clear evidence that the DO problem in this system continues even after those improvements. As in EPA’s original analysis, this evidence supports the finding that nitrogen reductions to reduce eutrophication are necessary to address the DO violations.

Finally, EPA’s permitting process is a public process governed by the provisions of 40 C.F.R. Part 124. Pursuant to those regulations, EPA’s permit documentation has undergone a public comment period during which all parties have had an opportunity to comment on the appropriateness or justification of any permit conditions. EPA will provide written responses to all comments received during the public comment period. All documents in support of the fact sheet and the responses to comments are contained in the Administrative Record for the draft and final permits. Upon issuance of the final permit, 40 CFR §124.19 provides procedures to administratively appeal the Region’s decision to the Environmental Appeals Board.

The City’s characterization of EPA being “unable or unwilling to share with the public the data and analysis upon which it is relying” is unfair and unfounded. The City’s representatives have declined the Region’s invitation to review the Administrative Record. We renew this offer and will make the record available for your review when you visit our offices for the proposed meeting or at any other time. The City has also submitted FOIA requests asking for documents that “show” or “confirm” various propositions. As you know, EPA has objected to how these FOIA requests were formulated on the grounds that they did not reasonably describe the records being sought. The City’s representatives declined EPA’s offers to assist in reformulating the requests so that a response could be provided, asserting its view that the requests were in fact proper. The legal issue of whether the FOIAs were properly formulated is an area of dispute between EPA and the City and is the subject of a pending administrative appeal.<sup>1</sup>

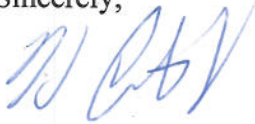
EPA’s permitting processes are established to be fair and impartial and provide opportunity for input from all stakeholders, including members of the public and the environmental community as well as the permittee. In this case, the final permit issuance will proceed according to this ordinary course, as outlined in the permit issuance regulations. EPA does not believe it is

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<sup>1</sup> We note that the FOIA requests did not accurately reflect EPA’s statements at the meeting. *Inter alia*, quoting from the FOIA request, EPA did not state that “all the money spent by municipal entities . . . did not change oxygen demanding pollutant loadings to the system, only bacteria”; did not make statements regarding a “sentinel approach” (this term has been coined by the City’s representatives to characterize EPA’s analyses and was not used by EPA); and did not make a statement that “little water quality improvement has occurred since 2004.”

appropriate to provide for assurances that final permit issuance will be delayed pending individual meetings with permittees, resolution of FOIA disputes, or some unspecified form of "objective confirmation" addressing a specific party's concerns, as requested in your letter. The Region does, however, welcome another meeting with the City and its representatives. We look forward to continuing discussion with the City, including after the final permit is issued and any appeals are resolved.

Sincerely,



H. Curtis Spalding  
Regional Administrator

cc: Ken Kopocis, OW  
Congressman Joseph P. Kennedy III  
Governor-elect Charlie Baker  
David Cash, MassDEP  
Mayor of Fall River  
Mayor of Brockton  
Massachusetts Coalition for Water Resource Stewardship  
John Hall, Hall & Associates