



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 07 2015

OFFICE OF  
GENERAL COUNSEL

Mr. Philip D. Roseman  
Hall & Associates  
1620 I Street, NW, Suite 701  
Washington, DC 20006

RE: Freedom of Information Request EPA-R1-2015-000252

Dear Mr. Roseman,

I am responding to your October 7, 2014 Freedom of Information Act (FOIA) request, in which you seek records associated with the development of the U.S. Environmental Protection Agency (EPA) Region 1 National Pollutant Discharge Elimination System draft permit #MA0100897 for the City of Taunton, Massachusetts. On November 3, 2014, EPA informed you that your request does not "reasonably describe the records being sought as required by 40 C.F.R. § 2.103 and [is] accordingly improper." See November 3, 2014 EPA Letter at 1. Specifically, EPA Region 1 informed you that a FOIA request that necessitates the agency to formulate opinions or analysis or conduct research in order to respond is not proper under FOIA. *Id.* Further, as you are aware, after November 3, EPA Region 1 made several attempts to seek further clarification of your request. See November 4-12, 2014 email chain between John Hall and Samir Bukhari.

On November 24, 2014, you appealed EPA Region 1's conclusion that your FOIA request was "improper." In an effort to resolve this matter, EPA is producing all records in full that are responsive to your FOIA request. Each item below correlates with the items that you requested on October 7, 2014. As noted below, portions of your October 7, 2014 FOIA request contain several mischaracterizations. I have also provided the location of each item's responsive records in the attached compact disc.

1. Any analysis showing that the money spent by municipal entities on various wastewater improvement projects in the Taunton estuary system and waters influenced by that system since 2004/2005 (*i.e.*, Mount Hope Bay and Rhode Island nitrogen reductions) did not change oxygen demanding pollutant loading to the system, only bacteria levels.

*The characterization of this data category does not accurately reflect EPA Region 1's position and is inaccurate.*

*The Administrative Record for the Final Permit does contain documents related to the Region's assessment of the impact of Fall River CSO mitigation projects on BOD and nutrient loading to the Taunton River Estuary and Mount Hope Bay. These are attached under Tab 1.*

2. Any analysis showing that the Brayton Point temperature reductions occurring

since 2004/05 and recently proposed discharge elimination did not/will not improve dissolved oxygen (DO) in the Taunton Estuary.

*The characterization of this data category ("that the Brayton Point temperature reductions occurring since 2004/05 and recently proposed discharge elimination did not/will not improve dissolved oxygen (DO) in the Taunton Estuary") does not accurately reflect EPA Region 1's position, although the Administrative Record for the Final Permit does contain documents related to the Region's assessment of the impact on elimination of the Brayton Point thermal discharge on DO conditions in Mount Hope Bay and the Taunton River Estuary. These are attached under Tab 2, and also include the data sonde information provided in response to request 5.*

3. Any documentation showing that EPA's published guidance and technical methods for nutrient criteria development and estuary DO assessments specify that a "sentinel approach" is a valid method for setting applicable nutrient criteria and nutrient reduction targets in estuarine systems.

*The term "sentinel approach" was coined by this requester, was not used by EPA, and has not been defined by the requester. To the extent that the request seeks information regarding the method used by the Region to establish a target total nitrogen concentration for the Taunton River Estuary and Mount Hope Bay, the Region would characterize that method as a reference-based approach based on site-specific data. EPA's published guidance and technical methods support the use of reference-based approaches and such documents were included in the Administrative Record prior to March 20, 2013; no additional documents on this point have been added since that time.*

4. Any documentation confirming that EPA has previously peer-reviewed the "sentinel approach" as proposed for use in this system.

*The term "sentinel approach" was coined by this requester and was not used by EPA; the term has not been defined in the document request, as noted in response to request 3. The Administrative Record does not contain documents related to peer review previously conducted by EPA on any aspect of the Region's permitting determination, although it is possible that reference-based approaches described in EPA guidance documents have undergone some form of peer review.*

5. The data sonde information, and any analysis thereof, that EPA referred to as demonstrating Taunton nutrients are still causing problems and that little water quality improvement has occurred since 2004.

*The characterization of this data category does not accurately reflect EPA Region 1's position, although the Region agrees that Taunton nutrients are still causing problems and that there is evidence that little water quality improvement has occurred since 2005 if the statement is limited specifically with respect to the DO and chlorophyll indicators that are measured at the Mount Hope Bay sonde (other water quality improvements have occurred in this system).*

*The Administrative Record does contain data sonde information and analysis thereof. These are attached under Tab 5.*

6. Any confirmation received from EPA HQ stating that the Regional Office's

"sentinel approach" was scientifically defensible.

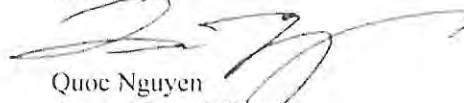
*The term "sentinel approach" was coined by this requester and was not used by EPA; the term has not been defined in the document request, as noted in response to request 3. EPA HQ does not generally review the Region's permitting determinations for "scientific defensibility" or otherwise, and the Administrative Record contains no such documents. EPA HQ has responded to a number of letters and requests made by this requester and other (related) entities; these responses have been included in the Administrative Record as copies have been provided to the Region and are included under Tab 6.*

7. Any information confirming EPA's claim that other entities may sue the agency if a 3 mg/l TN permit is not imposed and the data supplied by these entities in support of their position that a 3 mg/l TN limitation is necessary for this system.

*The Administrative Record does not contain any documents "confirming" any intent to sue by other entities if a 3 mg/l TN permit is not imposed. Documents provided by other entities in support of a 3 mg/l TN permit limit are attached under Tab 7.*

Attached is a compact disc containing the records responsive to your FOIA request. Please contact EPA's counsel Benton Peterson at 202-2522534 if you have any further questions on this matter.

Sincerely,



Quoc Nguyen  
General Law Office  
EPA Office of General Counsel

Enc.