



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

March 22, 2016

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

RE: City of Taunton Wastewater Treatment Plant
NPDES Permit Appeal No. 15-08; NPDES Permit No. MA0100897

Dear Ms. Durr:

Please find EPA Region 1's Response to the City of Taunton's Motion to Strike and to Supplement the Administrative Record, and accompanying Certificate of Service, in connection with the appeal referenced above.

Sincerely,

Samir Bukhari
US Environmental Protection Agency
Office of Regional Counsel, Region I
5 Post Office Square - Suite 100
Mail Code: ORA 18-1
Boston, MA 02109-3912
Tel: (617) 918-1095
Fax: (617) 918-0095
Email: bukhari.samir@epa.gov

Enclosures

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

_____))
In the Matter of:))
))
City of Taunton))
Wastewater Treatment Plant))
))
NPDES Appeal No. 15-08))
NPDES Permit No. MA0100897))
_____)

**EPA REGION 1’S RESPONSE TO THE CITY OF TAUNTON’S MOTION TO STRIKE
AND TO SUPPLEMENT THE ADMINISTRATIVE RECORD**

In publishing *ad hominem* attacks on the reputations of individual EPA Region 1 employees, including allegations that EPA counsel made “false and misleading statements,” Motion (Mot.) at 1, and generally “use[d] oral argument as cover for the Agency’s misdeeds,” Mot. at 7, the City of Taunton (the “City”) seeks yet another vehicle to submit over-length, out-of-time, inaccurate and, above all, unnecessary argument. The arguments and requested relief are unnecessary because, in the City’s view, “statements made by EPA counsel are false and misleading, as measured primarily by the unrefuted administrative record,” Mot. at 1, and “the identified statements and claims are thoroughly unsupported by, or are directly in conflict with, the Agency’s own administrative record,” Mot. at 2. If, as the City suggests, the administrative record will so clearly and definitively dictate the outcome of these issues, then the Environmental Appeals Board’s (“Board’s”) customary standard of review and ordinary procedures will be sufficient to adjudicate the case in an efficient, fair, impartial manner, because the Board evaluates petitions for review of a permitting decision as a matter of record review.

See In re Charles River Pollution Control Dist., NPDES Appeal 14-01, slip op. at 3-5 (EAB Feb. 4, 2015). Specifically, when evaluating a challenged permit decision for clear error, the Board examines the administrative record that serves as the basis for the permit decision to determine whether the permit issuer exercised his or her “considered judgment.” *See, e.g., In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 191, 224-25 (EAB 2000). As a whole, the record must demonstrate that the permit issuer “duly considered the issues raised in the comments” and ultimately adopted an approach that “is rational in light of all information in the record.” *In re Gov’t of D.C. Mun. Separate Storm Sewer Sys.*, 10 E.A.D. 323, 342 (EAB 2002). For this reason, the Board “will not hesitate to order a remand when a Region’s decision on a technical issue is illogical or inadequately supported by the record.” *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 568 (EAB 1998), *review denied sub nom. Penn Fuel Gas, Inc. v. U.S. EPA*, 185 F.3d 862 (3rd Cir. 1999). Although the City has tried to convert the history of individual factual judgments and legal interpretations made by Region 1 staff in this long, complex permitting process into an almost conspiratorial narrative of “clear misrepresentations, intentional half-truths, and purposeful misdirection,” Mot. at 5, the validity of the Region’s permit decision will ultimately rise or fall on the administrative record. The Board is well positioned to evaluate that decision against that record by utilizing its usual procedures.

CONCLUSION

For the foregoing reasons, the City’s Motion should be denied.

Dated: March 22, 2016

Respectfully submitted,

Samir Bukhari
Michael Curley
Assistant Regional Counsels
EPA Region 1
5 Post Office Square
MC: ORA 18-1
Boston, MA 02109-3912
Tel: (617) 918-1095
Fax: (617) 918-0095
Email: bukhari.samir@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing EPA Region 1's Response to the City of Taunton's Motion to Strike and to Supplement the Administrative Record, in the matter of City of Taunton Wastewater Treatment Plant, NPDES Appeal No. 15-08, was served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

By Electronic Mail and US Mail:

John C. Hall, Esq.
Philip D. Rosenman, Esq.
Hall & Associates
1620 I Street (NW)
Suite #701
Washington, DC 20006

Dated: March 22, 2016

Samir Bukhari