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February 2, 2016

VIA EAB eFILING SYSTEM

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
Washington, D.C. 20460-0001

**Re: Appeal No. 15-08 – NPDES Permit No. MA0100897
Petitioner’s Reply Concerning the Motion to Allow Use of PowerPoint**

Dear Ms. Durr:

Attached please find the City of Taunton’s reply to EPA Region 1’s response to Petitioner’s unopposed motion to allow use of PowerPoint to display excerpts of the record during oral argument. The Region did not initially oppose the motion, but has subsequently chosen to submit a response in opposition to the filing; Hall & Associates submits the attached as a reply to the Region’s argument. Thank you for your assistance with this filing.

Very truly yours,

John Hall

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

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

**CITY OF TAUNTON’S REPLY IN SUPPORT OF
“PETITIONER’S UNOPPOSED MOTION TO USE POWERPOINT
TO DISPLAY EXCERPTS OF THE RECORD DURING ORAL ARGUMENT”**

The City of Taunton, Massachusetts (the “Petitioner”, “Taunton”, or “City”) hereby replies to Environmental Protection Agency Region 1’s (“EPA”, “Agency”, or “Region 1”) Response in opposition to the City’s unopposed motion to use PowerPoint slides during Petitioner’s oral argument. The City sought and received both Board clarification and Agency approval prior to filing its motion to use PowerPoint slides in its oral argument. Those visual aids were to highlight specific charts and passages already within the administrative record and related Board filings. However, EPA Region 1 has now changed its position on the matter, arguing against allowing use of these visual aids. Accordingly, Taunton submits this reply to the Board.

ARGUMENT

EPA has raised a number of apparent objections, asserting that information that is not in the “administrative record” will be presented, including materials that the Court has already “struck”. Response at 4. EPA’s objections are misplaced. First, counsel has at no time indicated

that materials excluded by order of the Board will be presented; of course that will not occur. Second, EPA's objections are simply a side door attack on the Board's prior ruling leaving the inclusion of both the Howes' letter and Kirby affidavit in the record undecided. As EPA is well aware, the Board expressly deferred ruling on whether the governing record includes the Howes' letter and the Kirby affidavit. October 30, 2015 Order, at 5-6. As such, these documents and their admission to the administrative record are still pending issues before the Board and, therefore, may be referenced and displayed during oral argument. EPA's objection is a transparent attempt to preclude visual presentation of materials that EPA simply has no rational position defending.

Additionally, the Parties' filings in this appeal (including EPA's arguments in its Response that Taunton contends contain clear error or rational inconsistency) are inherently part of the documents that the Board will review in evaluating the merits of the petition. EPA claims it is only proper to present "administrative record" information and speculates that allowing anything else will "only engender confusion". Response at 4. The prior responses from the Board confirmed that this type of information may be presented upon authorization of the Board: "[p]lease note, to the extent that you seek to present materials *other than specific pages of documents from the administrative record for this permit*, you must first obtain permission from the Board in advance of the argument via motion that includes a copy of the proposed materials." See Ex 1 attached, Email from Erica Durr dated January 22, 2016 (emphasis added). EPA's assertion to the contrary is misplaced as is its speculative claims of confusion and impropriety. Taunton is allowed to display verbatim quotes from the parties' filings which are plainly in conflict with the underlying record as well as any "supplemental records" still under the Board's consideration.

Regarding EPA's claim that it had no prior indication that the materials might include "presentation materials drawn from previous filings" (Response at 3), this is verifiably false. Our January 21, 2016 email to the Clerk of the Board, which was later transmitted to EPA counsel on January 22, 2016, made explicit mention of the fact that the visual excerpts were intended to include "materials presented/referenced... in the various filings to the Board." See Ex. 1. When EPA indicated that it would not object to the City's motion, it was already aware that Taunton intended to include excerpts from the Parties' filings (like the Howes' letter and graphs from the Kirby Affidavit). Apparently, EPA has decided to rescind that concurrence, but claims that Taunton's counsel somehow misrepresented their prior concurrence. This is not a defensible stance.

Finally, Petitioner notes that EPA possesses no right to "disagree" over how a party may conduct an oral argument or to argue that Taunton's counsel *should* not "dwell upon, materials that post-date the administrative record...". Response at 4. Petitioner has the sole control over how and what to include in its arguments to the Board. The oral argument, like the briefs, may contain "excerpts" of quotes from record documents, charts, and the like. It is specious for anyone to argue that presenting excerpts, as a matter of law or general policy, is not permissible or otherwise misleading during an oral argument, as such presentation occurs verbally all the time. In this instance, we want to be sure that the Board has no uncertainty regarding the language and location of the relevant information proving clear legal or factual error. That is the right of Taunton, as a petitioner before this Board, in this proceeding.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests the Board's approval of its motion to allow the use of visual aids at oral argument.

Respectfully submitted,

//s// John C. Hall

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CERTIFICATE OF SERVICE

Undersigned hereby certifies that on this day, February 2, 2016, a copy of the foregoing Reply in Support of Petitioner's unopposed motion to use PowerPoint slides during oral argument was served on the parties identified below by U.S. first-class mail, postage pre-paid:

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Dated on the 2nd day of February, 2016.

//s// John C. Hall
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