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March 28, 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 to EPA’s Response to the City’s Motion to Strike and to Supplement the Administrative Record

Ms. Durr:

Attached please find for filing, the City of Taunton’s reply to EPA’s response to the City’s motion to strike and to supplement the administrative record in the above-captioned appeal. Thank you for your assistance with this filing.

Very truly yours,

Philip Rosenman

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

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

**PETITIONER’S REPLY TO EPA’S RESPONSE TO
CITY’S MOTION TO STRIKE AND TO
SUPPLEMENT THE ADMINISTRATIVE RECORD**

City of Taunton (“Taunton” or “the City”), hereby replies to the brief response by U.S. Environmental Protection Agency Region 1 (“EPA” or “Agency” or “Region”) to the City’s motion to strike and supplement the administrative record.

Firstly, while the standard of review by the Board for agency action is particularly generous, it is not an acceptable basis for placing false statements in the record. EPA has failed to realize that relying on motions to strike false and plainly misleading claims are an integral part of any normal judicial review process that seeks to maintain its integrity; thus, this is far from serving as a mere “over length brief” or an “ad hominem” attack. Response at 1. A number of false and misleading statements were made in the Agency documents and at oral argument, EPA’s own response offers no opposition to the falsity of these statements. It is therefore imperative, under a duty of candor, for counsel to ensure the tribunal is not misled by serious and documented erroneous claims. *United States v. Williams*, 952 F.2d 418, 421 (D.C. Cir. 1991) (“A lawyer appearing before us has a duty to assert facts only if, after a reasonably diligent inquiry, he believes those facts to be true.”).

Furthermore, the Region has failed to even deny that the Agency's inaccurate statements and positions claimed at oral argument and in prior filings, that were the subject of the motion, are anything but baseless fabrications. Given the type of motion filed and the Region's complete lack of a fact specific defense, instead choosing to argue that the false statements are of no consequence in the proceedings, the motion must be accepted by the Board for the unrefuted, specific factual allegations it proves were administrative agency staff fabrications.

Lastly, the Region has knowingly used a dataset that could not demonstrate causation, could not be used to develop reliable correlations, and could not even show any meaningful relationship between TN, algal growth and DO. Despite this, the Region has sought to claim to the public and Board that the imposition of a state-of-the-art TN limit (3 mg/l) was demonstrated as necessary based the review and analysis of that admittedly deficient information. It is apparent that this entire matter has been premised on a purposeful misrepresentation of the data for the Taunton Estuary system which does not, and, in fact, cannot show that the imposition of TN reduction is necessary.

Given that the City's requested relief is well within the Board's authority and EPA has offered no substantive defense, the Board should grant its motion to strike from the record the highly prejudicial and objectively false and misleading statements made by EPA in the record and at oral argument identified in the City's motion.

Respectfully submitted,

//s// John C. Hall
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March 28, 2016

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on this day, March 28, 2016, a copy of the Petitioner's Reply to EPA's Response to the City's Motion to Strike and to Supplement the Administrative Record was served on the individuals identified below by U.S. first-class mail, postage pre-paid, and e-mail:

Curt Spalding, Regional Administrator
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5 Post Office Square - Suite 100
Boston, MA 02109-3912

Samir Bukhari, Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Dated on the 28th day of March, 2016.

//s// Philip D. Rosenman
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