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November 4, 2015

VIA EAB eFILING SYSTEM

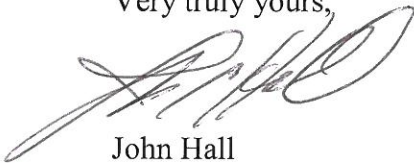
Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
Washington, D.C. 20460-0001

**Re: Appeal No. 15-08 – NPDES Permit No. MA0100897
Motion for Partial Reconsideration of Board Order on
Pending Motions and Setting Oral Argument**

Dear Ms. Durr:

Attached please find for filing, the City of Taunton's Motion for Partial Reconsideration of Board Order on Pending Motions and Setting Oral Argument in the above-captioned appeal. 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)	NPDES Appeal No. 15-08
Department of Public Works)	
)	
Permit No. MA0100897)	
)	

**CITY OF TAUNTON MOTION FOR PARTIAL
RECONSIDERATION OF BOARD ORDER ON PENDING MOTIONS AND SETTING
ORAL ARGUMENT**

The City of Taunton, Department of Public Works (“City”), hereby requests, under procedural rule 40 C.F.R. § 124.19(m), that the Board reconsider such parts of its *Order On Pending Motions And Setting Oral Argument*, (“Order”), dated October 30, 2015, as are set forth herein.

A. *Portion of Order Appealed From*

The City appeals from that portion of Part B of its Order that grants the motion of EPA Region I to strike, *in toto*, City Attachments 80 and 84 to the City’s Reply Brief. These attachments, under applicable Agency regulations at Section 124.19(d)(2), are properly considered as part of the administrative record of this NPDES permit appeal.

B. *Attachments Fully, or Substantially, Contain Parts of the Existing Administrative Record*

The Board recognized, at 3 of its Order, that “[p]arts of the record” are permitted to be attached to the brief, if properly identified. The City’s attachments, respectfully submitted, do

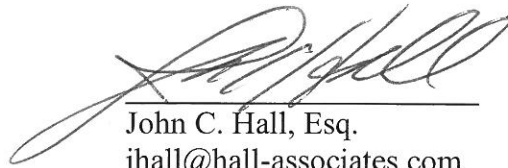
conform to the EPA rule in that they contain virtually only quoted record material, which is also identified by record document and page references. For example, Att. 84, save for the title, first sentence, and issue identification, contains *only direct quotes* from the established record (i.e., the comment document submitted by the City). In fact, the rule itself describes precisely the type of excerpts that Att. 84 represents: “(e.g., Excerpts from the Response to Comments Document* * * Attachment 1)”. Sec. 124.19(d)(2). This regulatory example fully fits Att. 84, as can be seen by the example of its first entry, “Taunton June 18, 2013 Comments Attachment 1 at 1”. Further, Att. 80, as well, contains largely quoted material from the EPA Response to Comments, with only a title, and brief issue narrative (to orient the Board regarding which issue was being addressed, not argument). The short “conclusion” language was not intended to be argument, but only a means of cross-referencing the issue to arguments presented in the Reply brief. Att. 84, and the RCT quotes presented in Att. 80, clearly meet the Agency “Attachments” rule by providing record materials to which the Board’s attention is directed.

The City is certainly willing, and hereby proffers, to have only those portions of its attachments considered by the Board which are direct quotes from record materials. In other words, headings, descriptions of issues and the like would be stricken, with the City’s consent. The City would, if the Board prefers, resubmit these attachments, with the offending sentences lined-through to show excluded language (Att. 80, with appropriate line-outs, is attached as an example, for the Board’s convenience, as Att. 1 hereto).

C. *Board Has Authority To Partial Reconsider Its Order And Admit Attachments*

The Board, under Section 124.19(m), has full authority to reconsider its Order and permit addition of the attachments to its appeal record.¹ The City has set forth that part of the Order which is erroneous and inconsistent with Section 124.19(d)(2). In fact, at least one of the struck attachments (Att. 84), precisely fits the regulatory example provided.²

The City respectfully requests that its Motion for Partial Reconsideration be granted in all respects.



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November 4, 2015

Counsel for the Petitioner

¹ The Board also has well-recognized inherent authority to reconsider its decisions. *See, e.g., Ivy Sports Med. LLC v. Burwell*, 412 U.S. App. D.C. 452, 457 (2014); *American Methyl Corp. v. EPA*, 749 F.2d 826,835 (D.C. Cir. 1984).

² Given the imprecision of the Board's Order with the scope of the EPA regulation on attachments, the City believes that it meets the "demonstrable error" requirement. *See, e.g., In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, at 2 (EAB Feb. 4, 1999).

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on this day, November 4, 2015, a copy of the foregoing Motion for Partial Reconsideration was served on the parties identified below by electronic mail:

Curt Spalding, Regional Administrator
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Samir Bukhari, Assistant Regional Counsel
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Dated on the 4th day of November, 2015.

//s// John C. Hall
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