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April 20, 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 on Motion to Remedy Improper Board Member Introduction of New Permit Appeal Issues and Burden of Proof, and Request for Removal of Presiding Judge Ward Due to Bias**

Ms. Durr:

Attached please find for filing, the City of Taunton’s Reply to EPA’s Response on Taunton’s above captioned motion to strike the new Board created appeal issues/burdens of proof and remedy bias. 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 ON MOTION TO REMEDY IMPROPER BOARD MEMBER  
INTRODUCTION OF NEW PERMIT APPEAL ISSUES AND BURDEN OF PROOF,  
AND REQUEST FOR REMOVAL OF PRESIDING JUDGE WARD DUE TO BIAS**

City of Taunton (“Taunton” or “the City”), hereby replies to EPA’s Response on Taunton’s above captioned motion to strike the new Board created appeal issues/burdens of proof and remedy bias. EPA’s response did not provide an objective basis to contradict a single issue documented in Taunton’s motion. In particular, EPA nowhere contradicts that the Board, for the first time at oral argument, created new burdens of proof and legal issues that (1) are nowhere contained within the NPDES rules and (2) were never previously raised by EPA as applicable to this permit appeal or as a defense to the enumerated improper Regional office actions identified in Taunton’s petition and related filings. Regarding the “form of relief” requested and bald assertion of prejudice to EPA, the Agency’s arguments are again misplaced as (1) EPA cannot be prejudiced by striking claims that the Agency itself never raised and (2) the Board is empowered to address such issues as it deems fit. Therefore, as requested, an order should be promptly issued striking the specifically identified, Board-generated new legal arguments, burdens of proof and regulatory conclusions that were never part of the appeal process, as a matter of due process and fundamental fairness.

Finally, EPA also failed to materially contradict a single observation of bias related to the actions of Presiding Judge Ward in this matter. Consequently, Judge Ward should be removed as requested. This necessarily must occur before any further Board action is undertaken to evaluate the objections raised by the City. Any lesser action leaves this Board with a tainted administrative review process.

Respectfully submitted,

//s// John C. Hall  
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April 20, 2016

**CERTIFICATE OF SERVICE**

Undersigned hereby certifies that on this day, April 20, 2016, a copy of the City of Taunton's motion to strike improper board member introduction of new permit appeal issues, burden of proof, and statements demonstrating bias was served on the individuals identified below by U.S. first-class mail, postage pre-paid, and e-mail:

Curt Spalding, Regional Administrator  
U.S. Environmental Protection Agency - Region 1  
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 20th day of April, 2016.

\_\_\_\_\_  
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