

RECEIVED  
U.S. E.P.A.

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

OCT 29 AM 9:35  
ENVIR. APPEALS BOARD

---

In re: )  
San Jacinto River Authority ) NPDES Appeal No.  
NPDES Permit No. TX0054186 )  
)

---

**MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD**

The San Jacinto River Authority ("Petitioner") hereby moves to supplement the administrative record in the above-referenced proceeding to include additional effluent sampling results collected after Petitioner's permit application for NPDES Permit No. TX0054186 ("Permit") was filed with Region 6 of the Environmental Protection Agency ("the "Region"). Such results have become germane to this proceeding due to arguments made by the Region in its Response to Comments issued September 28, 2007 for the Permit ("RTC"). Exhibit M of Petitioner's Petition for Review, filed contemporaneously herewith, contains laboratory reports for effluent sampling collected on July 3, 2006; October 2, 2006; October 4, 2006; October 6, 2006; and June 26, 2007 that were not considered by the Region in its decision to impose a copper monitoring requirement as discussed in Part IV.6.2 of the Petition. In its RTC, the Region raised, for the first time, the argument that 40 C.F.R. § 122.44(d)(ii) specifies that EPA "use procedures which account for the variability of the pollutant or pollutant parameter in the

effluent.”<sup>1</sup> The Region explains that the copper monitoring requirement was included in the Permit because one of three copper values submitted with Petitioner’s permit application was in excess of 70% of the daily average value necessary to maintain surface water quality standards.

Petitioner should be allowed to address this new “variability” argument first raised in the RTC by providing additional data to show that, in fact, the variability of the copper results is low, as discussed at Part IV.G.2. of the Petition. Because Petitioner is using such information to address a new argument raised for the first time by the Region in the RTC, it is appropriate to supplement the administrative record. The need to provide the additional copper data to refute the Region’s position that data contained in Petitioner’s application indicated a level of variability requiring the imposition of a monitoring provision was not “reasonably ascertainable” to Petitioner at the time it filed its comments, because the Region only identified this issue in its RTC.<sup>2</sup> Such supplementation also ensures a full and complete analysis of all available data by the permitting authority.

Wherefore, premises considered, Petitioner respectfully requests the Board grant this Motion to Supplement the Administrative Record and include all effluent sampling data results included at Exhibit M of its Petition for Review.

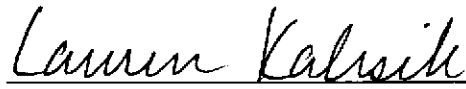
---

<sup>1</sup> RTC pgs. 15-16.

<sup>2</sup> See, *In re Beckman Production Services*, 8 E.A.D. 302,304 n. 3 (EAB 1999) (citing 40 C.F.R. § 124.13 requirement that “all reasonably available arguments” must be filed by the close of the public comment period and denying motion to supplement where information was “reasonably ascertainable” prior to close of public comment).

Respectfully submitted,

LLOYD GOSSELINK BLEVINS  
ROCHELLE & TOWNSEND, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800 (phone)  
(512) 472-0532 (facsimile)



LAUREN KALISEK

Attorneys for the San Jacinto River Authority

Date: October 26, 2007