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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 – Reply in Support of the City of Taunton’s Motion to Supplement the Record

Ms. Durr:

Attached please find for filing, the Reply in Support of the City of Taunton’s Motion to Supplement the 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 IN SUPPORT OF ITS
MOTION TO SUPPLEMENT THE RECORD**

City of Taunton (“Taunton” or “the City”), hereby replies to the response by U.S. Environmental Protection Agency Region 1 (“EPA” or “Agency” or “Region”) to the City’s motion to supplement the administrative record with the EPA-issued NPDES permit of Nashua, New Hampshire.

Firstly, this highly relevant document may be admitted into the administrative record since it was *obviously* not available at an earlier date or during the public comment period, thus it was impossible to have submitted it as part of the original comments. Both relevant case law and NPDES rules, already extensively briefed before the Board in this matter, showcase why the Nashua NPDES permit may be now included in the record. *See* H&A Motions to Supplement, Doc. 8 and Doc. 45. While EPA argues that this permit should not be admitted because it was not considered by the Region at the time of permitting, that argument is irrelevant. The later issued federal document is being submitted as confirmation of error in the earlier permit action with respect to regulating flow as a pollutant. Board procedures and relevant case law allow the admission of later documents that demonstrate the Region has made false statements to the Board and public on the need to regulate “flow as a pollutant”. *Id.*

Furthermore, the Agency argues that the Nashua permit should not be admitted to the record as H&A failed to seek EPA approval to submit the motion. However, all such filings have been opposed by the Agency in this matter and it is EPA that has the duty to inform the Board that it has determined, contrary to its claims in this matter, that flow need not be regulated in other major NPDES permits it has issued. Moreover failure to seek approval before filing is a slight procedural oversight, not a fatal and disqualifying action for a motion to supplement.

Contrary to EPA's averments, the record clearly confirms that EPA has created its supporting analyses for its "flow is a pollutant" claim well after the permit comment period closed on June 17, 2013, in response to supplemental comments submitted by the City. *See*, March 11, 2015 Memo to the File, Susan Murphy, at Doc. 1, Ex. 73. Moreover, the rationale used by the permit writer for Taunton's permit was not specific to publicly owned treatment works or discharge, as shown through the Agency claims that any increase in flow necessarily implies increased pollutant discharge, therefore justifying the imposition of a total flow limit. However, the Nashua permit sought to be admitted does not limit flow, unlike EPA has asserted is necessary. This permit stands to prove that EPA's position in Taunton's case that it is proper to regulate flow as a pollutant is a complete fabrication, otherwise all EPA-issued permits would regulate total effluent flow. The Board plainly may, and should, consider EPA's duplicity regarding the claim that flow must be regulated in the Taunton permit.

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 Reply in Support of its Motion to Supplement the 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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Boston, MA 02109-3912

Samir Bukhari, Assistant Regional Counsel
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Dated on the 20th day of April, 2016.

 //s// P. Rosenman
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