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May 13, 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: City of Taunton's Motion for Reconsideration

Ms. Durr:

Attached please find for filing, the City of Taunton's Motion for Reconsideration in the above-captioned appeal. EPA has indicated that it opposes this Motion. 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 Department of Public Works	)	NPDES Appeal No. 15-08
Permit No. MA0100897	)	

PETITIONER'S MOTION FOR RECONSIDERATION

The Board has created a fundamentally unfair and biased review with respect to the permit for Petitioner, the City of Taunton, Massachusetts ("Taunton"). The decision ignored controlling caselaw, applicable rules, and guidance, created new arguments and legal thresholds in support of Respondent's, United States Environmental Protection Agency Region 1 ("EPA", "the Agency", or "Region 1"), permit decision, unjustifiably struck any document showing EPA's action was in error, and assumed EPA's scientific and factual claims were well supported, without demonstration of such in the administrative record. Reconsideration of the Board's decision is requested to correct the clear and pervasive legal and factual errors and eliminate the bias evident in the Board's decision. After communicating with Region 1 counsel, it has been ascertained that EPA opposes this request.

I. Standard of Review

Under 40 C.F.R. § 124.19(m), a party may file a motion for reconsideration or clarification within 10 days of service of an EAB final order. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. *Id.; see also In re Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No.

00-15, at 2 (EAB Apr. 9, 2001) (Order Denying Motion for Reconsideration) (quoting *In re S. Timber Prod., Inc*., 3 E.A.D. 880, 889 (JO 1992)) ("The reconsideration process 'should not be regarded as an opportunity to reargue the case in a more convincing fashion. It should only be used to bring to the attention of [the Board] clearly erroneous factual or legal conclusions.'"). Motions for clarification must set forth with specificity the portion(s) of the decision for which clarification is sought and the reason(s) clarification is necessary. 40 C.F.R. § 124.19(m). A motion for reconsideration or clarification does not stay the effective date of the final order unless the EAB specifically so orders. *Id.*

II. Argument

Throughout all aspects of this appeal, Taunton has argued the following:

1. EPA did not provide adequate notice of the basis of its technical findings, thereby precluding the timely submission of comments;
2. EPA unlawfully withheld documents from public review, thereby precluding the timely submission of comments;
3. EPA improperly excluded extensive information relevant to the proper evaluation of the impact of the Taunton facility when it issued the draft permit for review;
4. The available data for the system confirm that DO in the Taunton Estuary is not being controlled by algal growth or TN levels;
5. EPA must demonstrate that the proposed permit limitation is *necessary* to achieve the applicable water quality standards based on current data/analyses;
6. EPA must demonstrate the selected TN water quality criteria will achieve the applicable narrative criteria.

The Board, by virtue of its May 3, 2016, opinion, disagreed with every single argument raised by Taunton. The following outlines the erroneous factual and legal errors made by the Board in denying the City's Petition based on these arguments.

a. The Board's decision improperly determined the adequacy of EPA's notice regarding the technical and regulatory findings used to justify the permit

With regard to the adequacy of EPA's fact sheet, the record (*i.e.*, the Fact Sheet itself and the contemporaneous support documents in the NPDES files) clearly established that the original fact sheet upon which public comments were based contained (1) no specific or reviewable analysis of any of the water quality data for the system, (2) no analysis of the physical differences between Mount Hope Bay, the Taunton Estuary and the selected "reference site," (3) no analysis showing EPA followed its "reference waters" guidance document, (4) no analysis showing that EPA followed the MEP process in selecting its reference site, (5) no analysis showing that, if the selected TN level was met in the Taunton Estuary, dissolved oxygen levels would be achieved, (6) no analysis of how algal levels influenced the DO readings in either the Taunton Estuary, reference location, or Mount Hope Bay, (7) no analysis of the available literature or existing hydrodynamic studies for Mount Hope Bay or the Taunton Estuary, (8) no evaluation of how water quality has improved in the system since 2005 due to a range of pollutant reductions achieved throughout the system, (9) no demonstration that the selected chlorophyll-a target (3-5 µg/L) was appropriate for the system, attainable or ever identified by MassDEP as the basis for determining whether or not an estuarine system is impaired, and (10) no documentation that the approach employed by EPA was scientifically defensible for finding that a community was discharging in violation of the Clean Water Act ("CWA" or "the Act") and creating enforceable permit requirements under Section 301(b)(1)(C) of the Act.

It is indisputable that the City submitted comments on each of these issues. (AR C.1 Att. 1 – City of Taunton Comments at 1; AR C.1 Att. 2 – H&A Comments at 3, 6, 8-10, 12-17, 19, 23-25, 29-33, 37-40). Similarly, the record makes clear that it was not until EPA met with the City in September 2014 that EPA began to make specific technical claims with respect to each of

these issues (AR H.15, AR H.43) and that Taunton requested EPA to provide the basis of these newly-revealed technical positions so that the City could, for the first time, have an opportunity to submit comments on the specifics of EPA's position. *Id.* Regarding the City's requests, the record establishes that EPA repeatedly avoided identifying the records that were the basis for its announced position. (*See*, Taunton Response to Motion to Strike, at 2-4; AR I.4, FOIA Request; Petition Att. 48, FOIA Response). It is also uncontested that EPA's analysis of the system data, hydrodynamics, and system load reductions occurring since 2005 first appeared in the Agency's Response to Comments – when the administrative record was officially closed (*compare* Fact Sheet (AR A.1) and Response to Comments (AR A.2)). Thus, there is no dispute that the public did not have notice of the specific bases for EPA's positions on a wide range of key technical issues until after the public comment period closed and the Response to Comments was issued.

The Board's decision, however, ignored this clearly established sequence of events, nowhere denied in EPA's filings. Rather, the Board chose to presume that EPA's only responsibility was to state that the new records were available for review in September 2014 – which itself *did not occur until after the public comment period had closed*, preventing the timely submission of comments, per the Board's decision. (Board decision, at 23-24). That EPA offering, however, is itself not proof that any of the new records and analyses were actually contained in EPA's public file at that time – an argument repeatedly raised by the City. The Board decision, in fact, points to no evidence in the record showing when, or if, EPA added its new evaluations to the public NPDES file. Likewise, the Board's decision never addressed the City's documentation that EPA contemporaneously asserted that it was unable to identify the records containing these new analyses (AR I.4, FOIA Request; Petition Att. 48, FOIA Response) it claimed to have in its possession in September 2014. Viewing the record as a whole, it is

inconceivable that EPA would have denied the FOIA request if, in fact, the analyses were sitting in the permit file the entire time. In any event, this series of well-documented events confirms that the City did not have a meaningful opportunity to address the detailed analyses later created by EPA that extensively formed the basis of the Board's decision to uphold EPA's action.

Rather than apply the test applicable to evaluating the timeliness of comments submitted after the close of a comment period (*i.e.,* whether a party raised all reasonably ascertainable issues and submitted all reasonably available arguments) the Board created a "you should have known what EPA was going to argue" standard of review. *See, e.g.,* Board decision, at 20, 25-26, 51-53, 55, 62, 69-70, 72, 76-78, 89-90). Clairvoyance is not a requirement of the NPDES rules. Obviously, one could not prepare a rebuttal to a specific EPA technical position until that position was expressly stated as the basis for a permit decision and the underlying information was made available to the public. That certainly was the case with respect to the detailed information first presented in EPA's Response to Comments. Accordingly, the Board's decision to strike all of the later filed comments, arguments, analyses – even those EPA expressly considered as part of its final decision (Board decision, at 20) – was clear error. The administrative record on review necessarily includes all materials 'compiled' by the agency that were 'before the agency at the time the decision was made.'" *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996) (citations omitted). "Courts in this Circuit have 'interpreted the "whole record" to include 'all documents and materials that the agency "directly or indirectly considered" . . . [and nothing] more nor less.'" *City of Duluth v. Jewell*, 968 F. Supp. 2d 281, 287 (D.D.C. 2013) (quoting *Pac. Shores Subdivision, Cal. Water Dist. v. U.S. Army Corps of Eng'rs*, 448 F. Supp. 2d 1, 4 (D.D.C. 2006)); *see also Thompson v. DOL*, 885

F.2d 551, 555 (9th Cir. 1989) (same); *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 739 (10th Cir. 1993)(same).

Moreover, the Board's assertion that the prohibition against submitting "late comments" even applies to arguments and analyses first revealed by EPA after the close of the comment period is clear error. The applicable NPDES rules plainly allow submission of such information to be considered timely. In so doing, the Board has created a double-standard whereby EPA may include new and extensive post-comment period analyses, data, evaluation to justify its permits, yet the City is precluded from commenting on this new information. In summary, the Board's decision supported the use of a sham public comment process, in direct contravention with Clean Water Act and Administrative Procedure Act ("APA") mandates and, therefore, must be withdrawn and revised to reflect conformance to norms of administrative due process. 40 C.F.R. § 124.8(b); 40 C.F.R. Part 25; 33 U.S.C. § 1251(e); *Nat'l Ass'n of Clean Water Agencies v. EPA*, 106, 734 F.3d 1115, 1148 (D.C. Cir. 2013) (purpose of notice-and-comment provision is "to ensure that affected parties have an opportunity to participate in and influence agency decision making at an early stage, when the agency is likely to give real consideration to alternative ideas.").[1]

b. The Board's decision ignored EPA's obligation to consider existing conditions under 40 C.F.R. § 122.44(d)

The City argued and EPA did not refute that its original Fact Sheet contained no analyses of improved water quality conditions occurring since the SMAST data were collected from 2004-2006. The basic position stated by the City was that, because water quality had certainly

[1] Likewise, the Board's assertion that EPA met minimum Fact Sheet requirements ignores additional requirements on the content of a fact sheet. 40 C.F.R. § 122.56 ("[F]act sheets shall contain…any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards…"). The calculations and necessary explanation plainly did not occur until after the Response to Comments was issued.

improved since 2006, EPA had to analyze current information to determine how much more, if any, improvement in water quality was necessary – assuming that nitrogen was the key to ensuring such further improvements. The Board's analysis of the City's objection was completely mishandled in that it presumed the City was seeking a complete elimination of the TN permit limit based on water quality improvements since 2004-2006. (Board decision, at 55). That was not the City's argument or the test applicable to determining whether or not the changed conditions needed to be considered. The City and EPA both documented that algal conditions in Mount Hope Bay had incrementally improved since 2006. (AR C.1 Att. 2 – H&A Comments at 38-39; AR A.2 (RTC) at 2-4; Taunton Petition, at 16-19). Similarly, the City noted, and EPA did not refute, that thermal changes due to Brayton Pont's closure would result in further incremental improvement in DO and algal growth (the City actually performed a calculation of the incremental improvement that physically had to occur in Mount Hope Bay where the "reference" station was located). (AR D.4). Finally, EPA itself documented that Brockton and other communities on the Taunton Estuary have significantly reduced nutrient loads to areas of concern since 2006. (AR A.2 at 3, 63).

What is still missing from EPA's evaluation is how much *incremental improvement* in DO these changes should have, or did produce. Based on that prediction, using the best available information, EPA should have determined how much of an "impairment" still exists. That never occurred during the public comment process, though it was required by 40 C.F.R. § 122.44(d). In the alternative, if the Board is correct that all the TN reductions since 2006 produced no meaningful change in either (1) the DO regime or (2) algal growth (Board decision, at 35-36), then EPA's assumed "strong relationship" between nutrient levels and these conditions has been disproven by EPA's own analyses and the Board's decision. In either event, EPA has not shown

that the proposed TN reductions are "necessary" given the available information for this system and current conditions.

c. The Board's conclusions regarding analyses performed under CWA §§ 301, 303, 402 are clear legal error

In response to Taunton's arguments that consistency between CWA § 303 and CWA §§ 301/402 decisions is required, the Board asserted that these provisions of federal law are governed by different requirements and different standards. (Board decision, at 39-41). That decision is demonstrably false and directly refuted by the statute itself, which requires all federal assessments to be based on the same adopted, EPA-approved water quality criteria. Both § 303 decisionmaking and § 402 decisionmaking are bound to apply the "applicable water quality standards" which are *identical* for both evaluations. *See* 40 C.F.R. § 122.44(d)(1) and 40 C.F.R. § 130.6. To underscore this fact, the existing federal rules at issue in 122.44(d) and Part 130 were all amended under the same rule proposal. 54 Fed. Reg. 23,868, 23,878, 23,879 (June 2, 1989).

For inexplicable reasons, the Board's decision ignored that EPA itself has repeatedly stated that the same water quality criteria interpretation (including that for narrative criteria) is applicable to both areas of decision making under the Act. (Reply Brief, at 6 citing EPA CALM Guidance 2002, at 3-4). Moreover, the Board decision nowhere addressed that 40 C.F.R. § 130.12 expressly requires consistency between 303(d) listing decisions and water quality decisions – a blatant oversight given how many times this applicable rule was cited in Taunton's various filings. (Petition at 16, Reply Brief at 5, 10). The Board's decision has violated the statute and implementing regulations by claiming that different narrative criteria interpretations may be used under Sections 303 and 402 of the Act – that is plainly prohibited by applicable law.

d. The Board clearly misapplied the applicable MassDEP narrative criteria interpretation for nutrients

The Board claims that it is permissible to use a 3-5 ug/l chlorophyll-a level as the basis for asserting that waters are nutrient impaired. (Board decision, at 32). Taunton has argued, and EPA nowhere refuted, that (1) MassDEP has never used this algal level as a basis for declaring waters nutrient impaired since the creation of the SMAST Critical Indicators report, (2) that value nowhere appears in the MassDEP, EPA-approved CALM document, (3) MassDEP does not presume that a DO concentration below 5 mg/L constitutes a nutrient impairment condition, and (4) EPA guidance confirms that the CALM document should provide the basis for narrative criteria interpretation. Taunton Petition, at 20-21; Taunton Reply, at 4-7. Despite these unrefuted factual and regulatory realities, the Board asserted that EPA could rely on SMAST report to declare waters nutrient impaired, even though MassDEP had never done this in the 13 years the document has existed. That decision was clear error in light of the "entire administrative record," which confirmed this target algal level and the TN concentration range presented in the SMAST report are not, and never have been, adopted by MassDEP as the basis for narrative criteria interpretation.

e. The Board's affirmation of EPA's approach to calculate the TN limit was clear error

After sanctioning the Region's determination that the Taunton Estuary was nutrient impaired and that the City was causing or contributing to this impairment, the Board approved the Region's approach to calculating the appropriate TN limit. (Board decision, at 64-76). The Board claimed its decision was based on a complete review of the record and confirmation that EPA's positions were "supported in the record." This was clear error with respect to EPA's assertion that its derivation of the TN target level was "scientifically defensible." It has been established that:

1. EPA prepared nothing more than a verbal description of how it selected MHB16 to create the 0.45 mg/l TN criterion used as a narrative criteria numeric translator.

2. The available federal guidance on proper utilization of "reference waters" approaches requires the consideration of the site-specific physical characteristics of the areas in question to ensure a valid "reference" area is being selected.

3. There are no analyses in the record showing that EPA properly derived the TN target level in accordance with federal reference waters guidance or MEP process methods – contrary to its claims.

4. EPA agreed that the two locations manifested considerable physical and watershed loading differences that would affect the DO regimes differently in each of the areas;

5. Every expert that reviewed the Agency's approach stated that it was not scientifically defensible.

6. EPA Headquarters itself stated there was no document in EPA's possession showing that the approach used by the Region was scientifically defensible.

7. The algal growth was essentially the same at the sentinel site and the Taunton Estuary, despite a major difference in available nutrient levels (Board decision, at 73) (*infra*, at 13-15), confirming that the areas did not respond similarly to nutrient concentrations.

While the Board defended the Region's approach by striking all contrary expert opinions (including the response from EPA Headquarters – the party that oversees EPA Region 1, as well as expert opinions EPA specifically evaluated – the Dr. Chapra Opinion (AR D.2.ii)) that confirmed EPA's approach was not defensible, the fact remains that (1) there is no analysis anywhere in the record showing EPA followed applicable federal or state guidance on proper selection and application of a reference site, (2) EPA admitted that there were significant differences relevant to the DO condition at each site, and (3) the Board confirmed that the algal response to TN response is dramatically different at each of the locations.

Per applicable caselaw cited by the City, EPA was required to consider the significant differences and address why the sentinel (reference) location properly reflected how TN would affect DO and algal growth in the Taunton Estuary given the unrefuted record that plainly it did

not. Petition, at 30-31; *see, e.g., Columbia Falls Aluminum .v EPA,* 139 F. 3d 914, 923 (D.C. Cir 1998) (EPA "retains the duty to examine key assumptions as part of its affirmative burden of promulgating a non-arbitrary, non-capricious rule."). The Board's failure to grasp the significance of these issues was clear error. EPA was also required to document how their "hybrid" procedure had been determined to be scientifically defensible by some outside credible source – which plainly was not EPA's permit writer. That defense also did not occur in the record, as required by applicable case law.

f. The Board's decision to strike the Reply Brief graphs and Kirby Affidavit, based on the newly-released information, was clear error

As part of the Board's decision to eliminate any document not filed with EPA by the end of the comment period, the Board claimed that the information in the Kirby Affidavit and graphs presented in the Reply Brief must be struck from the record. (Board decision, at 26). This decision, which is flawed for the same general procedural errors discussed above (*supra*, at 3-6), represents specific error on several grounds and confirms that the Board has supported a patently unfair and fundamentally flawed process for challenging EPA's permit actions. First, the EPA graphs being challenged first appeared in EPA's April 2015 Response to Comments – making it impossible to submit these analyses in June 2013, as demanded by the Board. Second, the EPA graphs were created based on the new information EPA released days before Taunton's petition was due. A federal district court decision, ignored by the Board, confirmed EPA's late release of this information was improper. (*See Hall & Assoc. v. EPA*, Civil Action No. 15-286 (RBW) (March 7, 2016 D.D.C.); City Motion to Supplement, Doc. #49, Att. 2). Thus, it is irrefutable that EPA's actions purposefully impaired the City's ability to know the existence of, and in a timely fashion, comment on this new information.

Third, EPA did not identify the index to the permit record until April 27, 2015, two weeks after the permit was issued. (*See* Att. 1 - April 21-22, 2015 Email chain, Samir Bukhari to John Hall, identifying the index as "draft" and "interim"). Even then, the index provided did not contain the database EPA used to create the new charts contained in the Response to Comments. Thus, it was not possible to reproduce EPA's new charts in the timeframe when the appeal was due (on May 13, 2015) two weeks later. Fourth, it is fundamentally unfair to create over a dozen new technical charts, over 100 pages of new analyses, new references, and, for the first time, add 40 new studies for the system, but also claim that the City was required to assess all of this new information and complete its Petition identifying every possible issue within a 30 day period.

Once the City received access to the database EPA claimed to have used (on June 17, 2015), it proceeded to quickly assess whether the new data actually supported EPA's action. There was no lack of timeliness associated with the submission of the Kirby Affidavit or the charts in the Reply Brief. Claiming that the Kirby Affidavit (new comments) also constitutes "over length argument" was fundamentally unfair and allowed EPA to "game the system" by ensuring that such comments could not be submitted within the open comment period. The Board's decision ensures that any permittee who attempts to analyze new EPA information used to justify a permit, will do so fruitlessly, as such analyses will not be reviewed by EPA or the Board. That is a fundamentally unfair conclusion that improperly impairs due process rights and violated 40 C.F.R. § 124.13, which only requires timely submission of comments that are "reasonably ascertainable." Late submission of additional comments is plainly allowed in this circumstance and it was clear error to conclude otherwise.

Finally, EPA itself did not claim that the charts presented in the Reply Brief, which were properly offered as rebuttal evidence, were improper as "late argument." These charts were

essentially identical to the one submitted as part of the original permit comments (AR C.1 Att. 2 – H&A Comments at 32-35) and reflected the City's timely argument that the data confirmed that meeting the TN criteria of 0.45 mg/L could not possibly ensure that a 5 mg/L DO standard would be met (AR C.1 Att. 2 – H&A Comments at 9, 17, 22-23, 31-40). Nevertheless, the Board unilaterally sought to strike these charts, which is highly inappropriate, as any part of the record may be cited in rebuttal to EPA claims made in its Response. The Board's action confirms how dramatically inappropriate and biased this Board has acted to uphold EPA's flawed permit action. It was clear error to strike the graphs that confirmed EPA's chosen TN target was both ineffective for meeting the DO criteria and could not control algal growth, which was repeatedly raised by the City in its comments and Petition.[2]

g. The Board's determination that EPA's conceptual model was confirmed by the data analysis was clear error

Both the Region and the Board defend a supposed relationship between excess nitrogen, excess algal growth, and low DO demonstrated in SMAST data evaluations:

> The Region reasonably used that SMAST data to confirm that nitrogen, algal and dissolved oxygen levels at various locations were indicative of a well-accepted scientific relationship between excess nitrogen and low dissolved oxygen. [Board decision, at 50]
>
> […] the data on dissolved oxygen correlate to high algal levels… [Board decision, at 54]

[2] Likewise, the Board's decision to strike the letter EPA had sent to Fall River (in the midst of developing the City's permit), confirming that the largest load to the system had not been accounted for in EPA's analysis, is mindboggling. It is clear from the record that this was a fact known to EPA but undisclosed to the City. The City is not under a duty to search for records in EPA's possession or publications that EPA knew about but improperly chose to ignore in the development of a permit. That is simply playing games with the proper administrative record, which is clearly impermissible. EPA is not allowed to benefit from its plainly deficient actions in preparing a full administrative record, as discussed in prior filings on this issue.

The Board also contended that annual average algal levels in the Taunton Estuary are higher than at the MHB16 reference station, justifying the use of this sentinel site location to set an appropriate TN objective to meet DO standards:

> Additionally, the mean algal levels at MHB16 for 2004 (10.5 μg/l) and 2005 (10.3 μg/l) were not higher than the highest mean algal levels in the Taunton Estuary for 2004 (10.8 μg/l) and 2005 (10.5 μg/l), as the City contends. See Fact Sheet at 23.

(Board decision, at 73). Highly relevant to the Board's observation regarding algal levels at the two key locations are the concurrent DO and TN levels present for 2004/2005 (AR A.1 – Permit Fact Sheet at 23):

SMAST Monitoring Data 2004-2005 (Fact Sheet Table 5 at 23)			
Station	Location	DO Min. Range (mg/L)	Ave. TN Range (mg/L)
MHB16	MHB-Proper	6.0 - 6.2	0.44 - 0.45
MHB18	Taunton R.	4.4 - 4.7	0.60 - 0.61
MHB19	Taunton R.	4.4 - 4.7	0.72 - 0.73
MHB21	Taunton R.	3.8 - 4.1	0.98 - 1.04

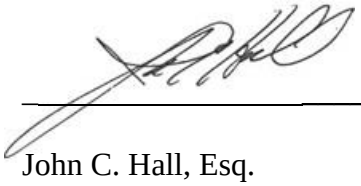
The Board apparently failed to understand, as argued by the City, that confirmation of essentially identical algal levels for MHB16 (the "protective" site) and the upper Taunton Estuary (the "impaired" sites stations MHB 18, 19 and 21) confirmed that algal growth, and by extension TN, is not the key to meeting the DO standard – precisely as petitioner's had argued. In accordance with the permit's conceptual model, and in defending MHB16 as a reference site, the Board's assessment needed to confirm that substantially reducing nitrogen concentrations to 0.45 mg/L TN in the Taunton Estuary would result in (1) significantly reduced algal growth, and (2) thereby achieve the 5.0 mg/L DO WQS. However, the chlorophyll-a averages at both sites are, for all purposes identical (despite dramatically different TN levels), and no one has argued that such an insignificant difference in algal levels could produce a significant increase in minimum DO (6.0 mg/L at MHB16 versus 3.8-4.7 mg/L in upper Taunton Estuary) found at

these sites (*See* Fact Sheet Table 5). As such, the Board's own evaluation of the data has confirmed that the alleged correlation between algal growth, DO and TN predicted by the conceptual model does not exist, as the algal level needed to ensure a 5.0 mg/L DO level would occur already existing in the Taunton Estuary.

This observation by the Board also confirms that attaining a 0.45 mg/L TN level in the Taunton Estuary cannot possibly assure the attainment of the applicable DO standards (the central premise for the need to regulate TN). TN levels 50-100% higher than the 0.45 mg/L target criteria did not produce any material increase in algal growth, in comparison to MHB16. Therefore, it is apparent that the Board's conclusion that the selected TN target and conceptual model were verified as appropriate based on the data for this system was clear error.

WHEREFORE, for all of the aforementioned reasons, the Board should grant Petitioner's Motion for Reconsideration.

Respectfully submitted,



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May 13, 2016

TABLE OF ATTACHMENTS

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on this day, May 13, 2016, a copy of the City of Taunton's Motion for Reconsideration 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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Samir Bukhari, Assistant Regional Counsel
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Dated on the 13th day of May, 2016.

_//s// Philip D. Rosenman_____
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