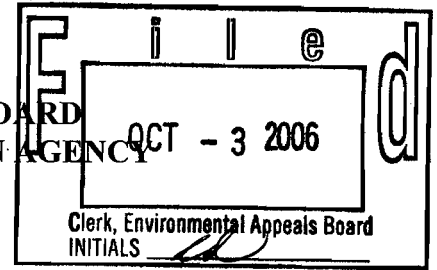


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Blue Plains Wastewater Treatment Plant)

NPDES Permit No. DC0021199)
_____)

NPDES Appeal Nos. 05-01
and 05-02

**ORDER DENYING MOTION
TO AMEND ORDER DISMISSING APPEALS**

On August 28, 2006, counsel for Friends of the Earth and Sierra Club (“FOE/SC”) and the District of Columbia Water and Sewer Authority (“WASA”) filed a motion to amend the Environmental Appeals Board’s August 23, 2006 order dismissing the above-captioned appeals with prejudice. Counsel point out that they consented to dismissal “without prejudice,” not “with prejudice.” They suggest that a dismissal with prejudice could be improperly construed as a dismissal on the merits of the case, when, in this instance, these dismissals flowed only from EPA Region III’s withdrawal of the contested permit terms and not from any adjudication on the merits.

The Board’s general practice is to dismiss with prejudice those permit appeals that come before it and are subsequently withdrawn, settled, or otherwise resolved in some fashion prior to the Board’s adjudication of the cases on the merits. The Board proceeds in this fashion to ensure the finality of appeals of permits that are remanded or withdrawn for reconsideration and reproposal by the permit issuer. On occasion, the Board will in these kinds of cases include explicit language in its orders explaining that the parties’ rights to further appeals of revised and repropose permits are preserved in all relevant respects. The Board took this approach in the instant case, explaining that “[t]hese dismissals with prejudice have no effect on the petitioners’

rights to submit comments on draft permit revisions or modifications pursuant to 40 C.F.R. § 124.11, to later petition the Board for appropriate additional permit modifications pursuant to 40 C.F.R. §§ 124.5 and 122.62, or to challenge any future EPA action with respect to NPDES Permit No. DC0021199 or any other permit on any grounds.” Order Dismissing Petitions for Review and Staying One Issue at 2 (EAB Aug. 23, 2006).

In seeking amendment of the Board’s order, counsel for petitioners do not cite any legal authority to support their contention that a dismissal with prejudice “could be misread as suggesting that the Board resolved something of substance in this case.” Motion at 1. In light of this fact, combined with our inclusion of specific language in the dismissal order to preserve the petitioners’ appellate rights, we are unpersuaded of the necessity to alter our disposition of these appeals.

The motion is hereby **DENIED**.

So ordered.

Dated: October 3, 2006

ENVIRONMENTAL APPEALS BOARD

By: Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying Motion to Amend Dismissal of Appeals** in the matter of Blue Plains Wastewater Treatment Plant, NPDES Appeal Nos. 05-01 and 05-02, were sent to the following persons in the manner indicated:

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OCT - 3 2006
Dated: _____



Annette Duncan
Secretary