

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

In re:)	
)	
Washington Aqueduct)	NPDES Appeal No. 03-07
Water Treatment Plant)	
)	
NPDES Permit No. DC0000019)	
)	

ORDER DISMISSING PETITION FOR REVIEW

On November 12, 2003, the Region III Administrator of the U.S. Environmental Protection Agency filed with the Environmental Appeals Board a notice withdrawing Parts III.D.1-.5 of NPDES Permit No. DC0000019, a final Clean Water Act discharge permit issued by Region III to the U.S. Army Corps of Engineers for the Washington Aqueduct Water Treatment Plant in Washington, D.C. The Regional Administrator is authorized to take this action under 40 C.F.R. § 124.19(d).

The withdrawn provisions are the focus of a permit appeal the Corps of Engineers had filed with this Board on April 16, 2003, after receiving NPDES Permit No. DC0000019 from EPA. Since the filing of that appeal, the Corps, EPA, and several federal natural resource agencies have been engaged in negotiations regarding the issues addressed in these permit provisions. Pursuant to these interagency negotiations, EPA now wishes to prepare new draft permit conditions to address the issues in dispute. The Regional Administrator reports that counsel for the Corps concurs with EPA's decision to withdraw Parts III.D.1-.5 of the permit. Respondent's Notice of Partial Withdrawal of Permit at 2 (filed Nov. 12, 2003).

In conjunction with its notice of withdrawal, EPA, along with the Corps of Engineers, also filed a joint motion for remand of the withdrawn permit provisions. *See* Agreed Motion for Remand at 1-3 (filed Nov. 12, 2003). EPA and the Corps ask that the Board remand this matter “to allow for the issuance of the proposed permit modifications for public notice and opportunity to comment in order to begin the modification process.” *Id.* at 1.

We hereby **TAKE NOTICE** of the Regional Administrator’s withdrawal of NPDES Permit No. DC0000019, Parts III.D.1-5, pursuant to 40 C.F.R. § 124.19(d). Section 124.19(d) gives EPA regional offices an absolute right to withdraw portions or all of a permit at any time prior to the Board’s rendering of a decision on a permit appeal. The provision specifies further that, once the permit or portions thereof are withdrawn, the Regional Administrator must “prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.” 40 C.F.R. § 124.19(d). In light of these regulatory requirements, the parties’ joint motion for a remand of the withdrawn permit conditions is unnecessary and therefore **DENIED**.

Finally, in accordance with the parties’ wishes, the Corps’ petition for review of the permit, designated as Board NPDES Appeal No. 03-07, is hereby **DISMISSED WITH PREJUDICE**. *See* Agreed Motion for Remand at 2-3. This dismissal with prejudice has no effect on the Corps’ 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. DC0000019 or any other permit on any grounds.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 12/15/2003

By: _____/s/_____
Ronald L. McCallum
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the matter of Washington Aqueduct Water Treatment Plant, NPDES Appeal No. 03-07, were sent to the following persons in the manner indicated:

By Facsimile and First Class Mail:

James K. Bemis, Assistant District Counsel
U.S. Army Corps of Engineers, Baltimore District
10 South Howard Street
Baltimore, Maryland 21201
telephone: (410) 962-6185
facsimile: (410) 962-0779

Philip Yeany, Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Mail Code 3RC20
Philadelphia, Pennsylvania 19103-2029
telephone: (215) 814-2495
facsimile: (215) 814-2603

Robert E. Gordon, Jr., Executive Director
National Wilderness Institute
805 King Street, Suite 400
Alexandria, Virginia 22314
telephone: (703) 836-7404
facsimile: (703) 836-7405

Date: 12/16/2003

/s/

Annette Duncan
Secretary