

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

\_\_\_\_\_) )  
In re: ) )  
KEOLIS COMMUTER SERVICES, LLC, ) NPDES Appeal No. 18-03  
North Station Railroad Terminal ) )  
 ) )  
NPDES Permit No. MA0028941 ) )  
\_\_\_\_\_ ) )

**ASSENTED-TO MOTION TO DISMISS THE PETITION FOR REVIEW AS MOOT**

On June 15, 2018, Region 1 of the United States Environmental Protection Agency (“Region 1”) and the Massachusetts Department of Environmental Protection (“MassDEP”) jointly issued National Pollutant Discharge Elimination System Permit No. MA0028941 (“NPDES Permit”) to Keolis Commuter Services, LLC (“Keolis”), Massachusetts Bay Transportation Authority, and Delaware North Corporation, as co-permittees. On July 18, 2018, Keolis filed a Petition for Review (“Petition”) with the Environmental Appeals Board (“EAB” or “Board”) requesting review of one (1) condition of the NPDES Permit. On August 13, 2018, the parties filed a joint motion requesting a 90-day stay to provide time to explore settlement. The Board issued an order granting the motion on August 15, 2018, which stayed this matter until Tuesday, November 13, 2018. During settlement discussions, the parties agreed on revised permit language to be issued for public notice and an opportunity to comment in a draft permit proceeding.

Under the regulations governing the EAB appeals process, the Regional Administrator may, at any time prior to 30 days after filing the response to the petition and upon notification to the

Board, unilaterally withdraw portions of the permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. 40 C.F.R. § 124.19(j); *see also* 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). To resolve the issue on appeal, the Region has determined to exercise that right by withdrawing Section I.B.9 of the Final Permit and commencing a permit modification proceeding to address the portion so withdrawn. *See* Notice of Partial Withdrawal Pursuant to 40 C.F.R. § 124.19(j), filed on October 15, 2018.

Consequently, the Region submits that the issue presented in the Petition for Review is rendered moot and, therefore, respectfully requests dismissal of this section of the Petition. *See In re E.I. DuPont De Nemours & Co.*, RCRA Appeal Nos. 13-01 & 13-02 (EAB May 14, 2014) (Order Dismissing Appeals); *In re Teck Alaska, Inc.*, NPDES Appeal No. 10-04, slip op. at 4-5 (EAB Apr. 30, 2010) (Order Dismissing Petitions for Review in Part and Denying Cross-Motion to Stay the Entire Permit) (holding that Region's partial withdrawal of contested permit provisions rendered sections of the Petition for Review moot); *In re San Jacinto River Auth.*, NPDES Appeal 07-19 (Mar. 28, 2008) (Order Dismissing Petition for Review); *In re City of Keene Wastewater Treatment Facility*, NPDES Appeal No. 07-18 (EAB Dec. 5, 2007) (Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot). Moreover, dismissal of this issue would have no effect on Keolis's right to submit comments on the draft permit modification or to seek Board review of any final modification of NPDES Permit No. 0028941, in accordance with 40 C.F.R. § 124.19. *In re San Jacinto*, slip op. at 4. Finally, the Region has contacted counsel for Keolis regarding dismissal of this issue and represents to the Board that Keolis assents to this motion. *See* 40 C.F.R. § 124.19(f)(2).

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss the Petition as Moot, in the matter of Keolis Commuter Services, NPDES Appeal No. 18-03, were served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
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Dated: October 19, 2018

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Joshua Secunda