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From:

Deane H. Bartlett (3R020) APPEALS BOARD
Senior Assistant Regional Counsel
U. S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel.: (215) 814-2776
Fax: (215) 814-2603

PA REGION III

To: Ms. Eureka Dore, USEPA/EAB

at FAX No: 202/233-0121

Date: 8/10/06 Number of pages (including cover): _____

Subject: Notice of partial withdrawal
Blue Plans permit

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2006 AUG 10 AM 10:22
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

ENVIR. APPEALS BOARD

August 10, 2006

Via Telefax and Federal Express

Ms. Eurika Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G Street N.W. , Suite 600
Washington, DC 20005

Re: Respondent's Notice Of Partial Withdrawal of Modified Permit
Permit Number: DC 0021199
EAB Consolidated Appeals Nos. 05-01 and 05-02

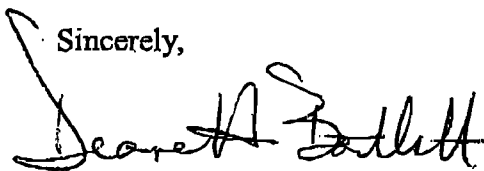
Dear Ms. Durr:

Enclosed please find one original and five copies of the above referenced document, which I am also serving on counsel for Petitioners in this matter.

Please contact me at 215-814-2776 if you have any questions.

Thank you for your attention to this matter.

Sincerely,



Deane H. Bartlett
Senior Assistant Regional Counsel

Enclosure

cc: telefax and regular mail (with enclosure):
David Baron, Esquire - EarthJustice Legal Defense Fund
David Evans, Esquire - McGuireWoods LLP

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

2006 AUG 10 AM 10: 22
ENVIR. APPEALS BOARD

_____)
In re:)
)
Blue Plains Wastewater Treatment Plant)
)
) NPDES Appeal Nos. 05-01 and
) 05-02
NPDES Permit No. DC 0021199) Consolidated
)
_____)

RESPONDENT'S NOTICE OF PARTIAL WITHDRAWAL OF MODIFIED PERMIT

The United States Environmental Protection Agency, Region III (Respondent or EPA), hereby notifies the Environmental Appeals Board that, pursuant to 40 C.F.R. Section 124.19(d), EPA is withdrawing portions of the final modified NPDES permit issued on December 16, 2006 to the District of Columbia Water and Sewer Authority (WASA) for the Blue Plains Wastewater Treatment Facility in Washington, DC.

1. The NPDES regulations at 40 C.F.R. Section 124.19(d) state:

The Regional Administrator, at any time prior to the rendering of a decision under paragraph c. of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and 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. Any portions of the permit which are not withdrawn and which are not stayed under § 124.16(a) continue to apply.

2. On December 16, 2004, EPA issued a modification to NPDES Permit No. DC 0021199 to WASA, covering discharges from the wastewater system and the Blue Plains Wastewater Treatment Plant. The permit that was modified was originally issued on January 24, 2003.

3. Two parties filed timely Petitions for Review with the Board. Specifically, on January 18, 2005, the Friends of the Earth and the Sierra Club (FoE/SC) filed a petition to review the modified Permit, designated Appeal No. 05-01. Also on January 18, 2005, the permittee, the District of Columbia Water and Sewer Authority (WASA), filed a petition for review, designated Appeal No. 05-02. By letters dated January 25, 2005, the Board directed the Region to file its

Responses to the Petitions on or before March 14, 2005. By Order dated February 23, 2005, the Board granted the Region's unopposed Motion to consolidate these appeals.

4. To give the parties an opportunity to negotiate a resolution of the issues raised in these appeals, the Board has extended EPA's deadline for filing its response to the petitions and administrative record. EPA's current response deadline is August 17, 2006.

5. The parties have negotiated extensively, but have recently determined that a negotiated settlement will not be possible. Based upon its own independent review, EPA has decided, however, that it will withdraw the contested permit terms and propose modifications to those terms. Therefore, EPA is hereby withdrawing the contested permit terms pursuant to 40 C.F.R. Section 124.19(d). The withdrawn permit terms, which have been contested by both WASA and FoE/SC are Part III. Section E. 1 through 4: Water Quality Based Requirements for CSOs.

6. Pursuant to 40 C.F.R. Section 124.19(d), EPA will prepare a new draft permit addressing the withdrawn permit conditions identified in Paragraph 5, above, and will submit the revised permit terms for public comment.

7. EPA is withdrawing all of the issues raised in Appeal Number 05-01 and all but one of the issues in Appeal Number 05-02. The only remaining issue is the request, by WASA, in Appeal Number 05-02, that the Board review the Agency decision with regard to the inclusion of a compliance schedule for implementation of the Long Term Control Plan required to be implemented by Part III Section C. of the permit. The Agency declined to include a compliance schedule in the permit, having determined that placement of the compliance schedule in the Consent Decree in U.S. v. District of Columbia Water and Sewer Authority, et al., Civil Action No: 1:002CV0251 (D.D.C.), is consistent with the requirements of Section 402(q) of the Clean Water Act and the 1994 CSO Policy. EPA intends to either seek a stay of its response to this challenge to the permit until the permit modification which the Agency intends to propose is issued as final, so that any challenges to the modification may be resolved jointly with that issue, or, in the alternative, to seek additional time in which to brief that issue for the Board.

8. Pursuant to 40 C.F.R. Section 124.19(d), all portions of the permit which are not withdrawn by this notice, and not previously stayed, continue to apply.



Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency
Region III

DATE: 8/9/06

CERTIFICATE OF SERVICE

I hereby certify that Respondent's Notice of Partial Withdrawal of Modified Permit NPDES Permit DC0021199 issued December 16, 2004, was served on this date as set forth below:

The original was telefaxed to 202/233-0121 and the original and five copies were mailed by Federal Express to:

Ms. Eurika Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G. Street, N.W., Suite 600
Washington, DC 20005

One copy each was telefaxed and mailed by regular mail, postage prepaid to counsel for Petitioners:

Friends of the Earth and Sierra Club:

David S. Baron, Esq.
Earthjustice Legal Defense Fund
1625 Massachusetts Ave., NW Suite 702
Washington, DC 20036-2212

District of Columbia Water and Sewer Authority:

David E. Evans
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue, N. W.
Washington, D.C. 20036-5317

Date: 8/10/06



Deane H. Bartlett
Senior Assistant Regional Counsel
Office of Regional Counsel
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-2776
Fax: (215) 814-2603