

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

In re:)	
)	
)	
District of Columbia Water and Sewer Authority)	NPDES Appeal Nos. 05-02,
Permit No. DC0021199)	07-10, 07-11 and 07-12
)	

**CHESAPEAKE BAY FOUNDATION’S RESPONSE
TO WASA’S MOTION FOR RECONSIDERATION**

Pursuant to this Board’s April 3, 2008, Order, the Chesapeake Bay Foundation (“CBF”) files its Response to the District of Columbia Water and Sewer Authority’s (“WASA”) Motion for Reconsideration. In support of its Response to WASA’s Motion for Reconsideration, CBF states the following:

ARGUMENT

On April 1, 2008, WASA filed its Motion for Reconsideration of this Board’s Order denying WASA’s petition challenging the nitrogen effluent limit in the Final Permit. WASA argues that it has met the standard of review for reconsideration and that the nitrogen allocation in the permit was erroneous due to deficiencies in the allocation process.

1. WASA Has Not Met the Standard for Reconsideration

Pursuant to 40 C.F.R. § 124.19(g), a party must set forth matters that have been erroneously decided in order for a motion for reconsideration to be granted. However, as stated in the Environmental Appeals Board (“EAB”) Practice Manual, the reconsideration process is not an opportunity for a party to reargue the case in a more convincing fashion. Manual at 37-38, quoting *In re Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No. 00-15,

slip op. at 2 (EAB Apr. 9, 2001). Yet that is exactly what WASA is trying to do here. WASA is simply rearguing the same issues it raised in its initial petition for review and during oral argument. In its motion, WASA has failed to cite to any clearly erroneous mistakes of law or fact made by the Board. Therefore, WASA has not met the standard of review for reconsideration, and this Board should deny its motion.

2. WASA Must Meet the Nitrogen Limit in the Permit.

WASA argues that the nitrogen allocation in the permit is erroneous and that there are deficiencies in the allocation process. Contrary to WASA's musings, simply putting the word erroneous in front of a decision does not make it so. There is nothing erroneous about the nitrogen allocation or the allocation process in the permit. WASA is missing the bigger picture.

The driving principle of the permit at issue here is the water quality standards established by the District of Columbia as well as Maryland and Virginia. The CWA requires that all NPDES permits set effluent limits that meet water quality standards. 33 U.S.C. § 1311(b)(1)(C). Not only does WASA need to meet the District's water quality standards but each NPDES permit that is issued must also meet all water quality standards of downstream states. 40 C.F.R. § 122.4(d). Furthermore, the permit must include effluent limits for all pollutants that cause, have the potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria. 40 C.F.R. § 122.44(d)(1)(i) and (iii). This gives EPA the discretion and authority to set limits in NPDES permits at whatever level is necessary to achieve those water quality standards. *Id.*

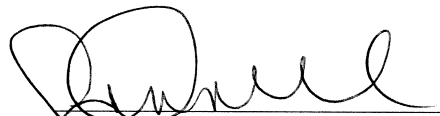
If WASA's argument was correct and the allocation process was subject to rulemaking then every permit limit would have to be set through a rule instead of the current permitting procedure. The current permitting procedure allows for plenty of public notice and comment. In

fact, WASA commented multiple times on its permit and the nitrogen limit. Therefore, the nitrogen limit in the permit and the allocation process used to determine that limit have provided ample opportunity to WASA, as well as other interested parties, to bring their concerns to the attention of EPA.

The bottom line is that WASA must upgrade its plant to achieve the water quality standards of the District, Maryland and Virginia in order to comply with the CWA.

CONCLUSION

Because WASA has failed to show that this Board has made a clear error or mistake of law or fact, its Motion for Reconsideration should be denied and the Board's Order of March 19, 2008, should stand.



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Date: April 14, 2008

Certificate of Service

I certify under penalty of perjury that on this 14th day of April, 2008, a copy of the foregoing Chesapeake Bay Foundation, Inc.'s Response to WASA's Motion for Reconsideration, was served as follows:

A copy was electronically filed and mailed, by express mail, to:

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Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
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Washington, D.C. 20005

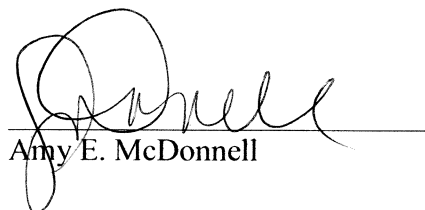
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