

EXHIBIT B



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January 19, 2007

Ms. Mary Letzkus  
U.S. Environmental Protection Agency (EPA)  
Region III  
Office of Watersheds (3WP13)  
1650 Arch Street  
Philadelphia, PA 19103

**RE: Draft Discharge Permit (DC0021199) for the Blue Plains Wastewater Treatment Plant in Washington, DC**

Dear Ms. Letzkus:

The Chesapeake Bay Foundation, Inc. (CBF) has reviewed the most recent revision to the draft National Pollutant Discharge Elimination System (NPDES) permit for the District of Columbia Water and Sewer Authority's (WASA) Blue Plains Wastewater treatment plant (Permit No. DC0021199). Specifically, in response to comments by CBF (dated October 4, 2006 and incorporated herein by reference) and others, EPA has included an effluent limit, 4.689 million pounds of total nitrogen annually, that is consistent with the load allocation necessary to achieve the water quality goals of the *Chesapeake 2000 Agreement*. While we are pleased that EPA has made this modification to the permit, the failure of EPA to include a schedule for complying with the new limit completely negates this improvement and fails to provide sufficient public notice and comment.

Blue Plains is, by far, the largest point source of nitrogen and phosphorus pollution in the Chesapeake Bay watershed, with an average annual discharge from 2002 to 2005 of more than 6 million pounds of nitrogen per year. Consequently, permit limits and time frames for achieving those limits consistent with the commitment of the *Chesapeake 2000 Agreement*, to correct the sediment and nutrient impairments of the Bay by 2010, are critical.

Although the permit states that the total nitrogen limit shall be "effective upon permit issuance," the accompanying fact sheet notes that the facility cannot achieve this limit absent installation of new treatment technologies. However, the permit contains no compliance schedule. The fact sheet states that EPA "intends" to establish a compliance schedule "in a separate enforceable document that will be issued simultaneously with the final permit."

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There is no reason why the compliance schedule should not be subject to public notice and comment as part of the permit. In fact, such notice and comment on the entire permit, including the compliance schedule, is a requirement of the Clean Water Act, 33 U.S.C. § 1342(a)(1) and EPA's own regulations, 40 C.F.R. §§ 122.43, 122.47, and 124.10. The draft permit, as published, thus violates both the Act and its regulations.

While the fact sheet states that "one means of achieving" an enforceable compliance schedule "is through modification to the Consent Decree between EPA and the permittee in *U.S. v District of Columbia Water and Sewer Authority, et al.*," such a process would preclude true participatory public engagement on the schedule; it would allow only for the very limited judicial review provided as part of the consent decree approval. CBF and other members of the public, not being named parties to any consent action, would have little to no input on schedule development and little or no ability to challenge its terms. This proposal, in essence, precludes public comment on the compliance schedule. Moreover, the process provides no assurance that there will be interim permit limits for nitrogen prior to completion of the upgrade.

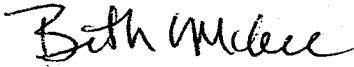
Surely these outcomes cannot be the intent of EPA.

By failing to include a compliance schedule in the permit, EPA has also contradicted their own statements regarding the regulation of nutrient discharges from point sources in the watershed. In their response to CBF's December 2003 Petition, EPA stated they had existing authority to ensure that NPDES permits contain appropriate permit limits based on the revised water quality standards by the 2010 deadline (p. 36 - 38) and that they could object to permits that failed to satisfy the requirements of 40 CFR 122.44. The *NPDES Permitting Approach for Discharges of Nutrients in the Chesapeake Bay Watershed* (December 2004) highlights the process by which appropriate nutrient limits would be established. The *Permitting Approach* stipulates that "when the revised Maryland WQS are effective, EPA and the state NPDES permitting authorities agree to issue NPDES permits...consistent with the applicable state tributary strategy" (p.2). The approach allows for the incorporation of compliance schedules, but indicates that the compliance schedule should be in keeping with the 2010 deadline.

The lack of transparency in this permit and the compliance schedule development process, particularly with a permit that has such importance to Bay restoration and that sits literally in the midst of the nation's Capital, is disappointing, to say the least. As proposed, the permit minimizes public input, violates existing law and regulation, contradicts clearly established policies and commitments, and sets the stage for possible noncompliance with the *Chesapeake 2000 Agreement*. In contrast, both Maryland and Virginia have issued similarly situated discharge permits that have included, when necessary, compliance schedules as integral parts of the permit itself. EPA should do no less.

We would appreciate the opportunity to work with EPA and WASA to provide meaningful input to the compliance schedule for the upgrade of the Blue Plains treatment plant through its incorporation in the permit itself, subject to the public comment process for permits. If you have any questions or wish to discuss the matter further, please contact me at 410-268-8816.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McGee". The signature is written in a cursive, flowing style.

Beth L. McGee, Ph.D.

cc: Rich Batiuk, U.S. EPA Chesapeake Bay Program  
Roy Hoagland, CBF  
Jon Mueller, CBF