



From:  
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EPA REGION III

ENVIRONMENTAL APPEALS BOARD

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Date: 4/11/08 Number of pages (including cover): 7

Subject: Response to WASA Motion for Reconsideration  
Appeal Nos. 05-22, 07-10, 07-11 and 07-12

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

April 11, 2008

Via Telefax and Federal Express

Ms. Eurika Durr  
Clerk of the Board, Environmental Appeals Board  
U.S. Environmental Protection Agency  
1341 G Street N.W., Sixth Floor  
Washington, DC 20005

Re: Response to WASA Motion for Reconsideration  
Permit Number: DC 0021199  
EAB Appeals Nos. 05-02, 07-10, 07-11 and 07-12

Dear Ms. Durr:

Enclosed please the original and five copies of the above-referenced document, which was filed via telefax today and which I am also serving on the other parties in these matters.

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

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deane H. Bartlett".

Deane H. Bartlett  
Senior Assistant Regional Counsel.

Enclosure

cc: regular mail (with enclosure):  
David Baron, Esquire - EarthJustice Legal Defense Fund  
David Evans, Esquire - McGuireWoods LLP  
John Mueller, Esquire - Chesapeake Bay Foundation  
F. Paul Calamita, Esquire - Aqualaw



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

ENVIRONMENTAL APPEALS BOARD

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**In re:**

Blue Plains Wastewater Treatment Plant

NPDES Permit No. DC 0021199

NPDES Appeal Nos. 05-02  
07-10, 07-11 and  
07-12

**REGION III RESPONSE TO DISTRICT OF COLUMBIA WATER AND SEWER  
AUTHORITY'S MOTION FOR RECONSIDERATION**

The United States Environmental Protection Agency Region III (Region) hereby responds to the April 1, 2008 District of Columbia Water and Sewer Authority (WASA) Motion for Reconsideration of the Environmental Appeals Board (Board) March 19, 2008 Order denying WASA's petition for review of the Region's decision to include a total nitrogen limit in the April 5, 2007 modified National Pollutant Discharge Elimination System (NPDES) permit for WASA's Blue Plains facility. WASA has asked the Board to reconsider that portion of the Order rejecting WASA's challenge to the total nitrogen limit based on deficiencies in the allocation process.

Under 40 C.F.R. § 124.19(g), motions for reconsideration "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors."

Reconsideration is generally reserved for cases in which the Board is shown to have made a

demonstrable error, such as a mistake of law or fact. See *In re Gary Development Co.*, RCRA (3008) Appeal No. 96-2, at 2 (EAB, Sept. 18, 1996) (Order Denying Motion for Reconsideration); “The reconsideration process ‘should not be regarded as an opportunity to reargue the case in a more convincing fashion. It should only be used to bring to the attention of the [Board] clearly erroneous factual or legal conclusions.” EAB Practice Manual at 37-38 (quoting from *In re Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No. 00-15, slip op at 2 (EAB Apr. 9, 2001).

WASA has failed to meet its burden under this high standard. First, WASA has not articulated a legal or factual basis as to why the Board’s Decision that it had no jurisdiction to review the underlying allocation was erroneous. The Board correctly understood that the allocation process and the permitting process are separate and distinct. (Order at 44-45). As the Board pointed out, it is the effluent limitation in the permit, and not the underlying allocation of nitrogen, that falls within the Board’s jurisdiction to review. *Id.* at 44.

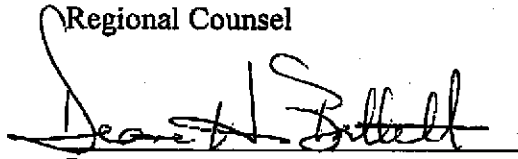
Similarly, WASA’s allegation that the Board’s finding that the Region adequately responded to comments concerning the nitrogen limit was erroneous is not correct. As the Board pointed out, “[t]he Region dedicated ten pages of its Response to Comments document to WASA’s comments.” Order at 47. This includes response to WASA’s comment regarding the relative contributions of the Potomac and the Susquehanna rivers. (Response to Comments p. 21-22).

In filing this motion, WASA is simply attempting to reargue this case, which was

amply addressed in briefs and at oral argument. WASA has not met the standard for establishing a basis for reconsideration. Therefore, the Motion for Reconsideration should be denied.

Respectfully submitted,

William C. Early  
Regional Counsel

A handwritten signature in black ink, appearing to read "Deane H. Bartlett", written over a horizontal line.

Deane H. Bartlett  
Senior Assistant Regional Counsel  
EPA, Region III

OF COUNSEL:

Sylvia Horwitz  
Office of General Counsel  
United States Environmental Protection Agency

**CERTIFICATE OF SERVICE**

I hereby certify that Respondent's Response to WASA's Motion for Reconsideration in Appeal Nos. 07-10, 07-11 and 07-12, was served on this date as set forth below:

A copy was telefaxed 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  
1341 G. Street, N.W., Sixth Floor  
Washington, DC 20005

One copy was mailed by first class mail, postage prepaid to counsel for each of the Petitioners:

Chesapeake Bay Foundation:

Amy McDowell, Esquire  
Jon A. Mueller, Esquire  
Chesapeake Bay Foundation  
Philip Merrill Environmental Center  
6 Herndon Avenue  
Annapolis MD 21403

District of Columbia Water and Sewer Authority:

David E. Evans, Esquire  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030

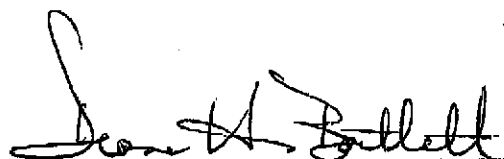
**Friends of the Earth and Sierra Club:**

Jennifer C. Chavez, Esquire  
David Baron, Esquire  
Earthjustice Legal Defense Fund  
1625 Massachusetts Ave., NW Suite 702  
Washington, DC 20036-2212

**NACWA**

F. Paul Calamita, Esquire  
AquaLaw PLC  
6 South 5<sup>th</sup> Street  
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Date: 4/11/08



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