

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

In the Matter of:)
)
VEOLIA ES TECHNICAL) Appeal No. CAA 17-02
SOLUTIONS, L.L.C.)
)
)
Permit No. V-IL-1716300103-2014-10)

THE REGION’S RESPONSE TO PETITIONER’S MOTION TO STAY

As directed by the Environmental Appeals Board (“Board”), in its February 22, 2017 Order Directing Region to File Response to Petitioner’s Motion, the United States Environmental Protection Agency Region 5 (“Region”) hereby responds to the February 15, 2017 Motion to Stay (“Motion”) filed by Veolia ES Technical Solutions, L.L.C. (“Petitioner”).

The final Title V permit for Petitioner’s Sauget, Illinois facility, issued by the Region on January 18, 2017 (“Permit”), is not stayed in its entirety under 40 C.F.R. § 71.11(i)(2)(ii). Only the specific terms and conditions of the Permit that are the subject of the request for review are stayed by 40 C.F.R. § 71.11(i)(2)(ii). The specific terms and conditions identified by Petitioner in its Petition for Review are Section 2.1(D) and Section 2.7¹ of the Permit. Petition at 6.

While the Region acknowledges that Petitioner has also alleged defects in the notice and comment process for the Permit, the Region strongly disagrees with these allegations. Petition at 6 and 17-19; Motion at 2. The Region expects to address these alleged defects in its response to the Petition, due March 21, 2017. However, similar to *In the Matter of Teck Alaska Incorporated*

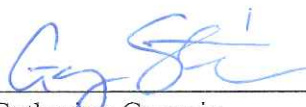
¹ The Region notes that while Petitioner claims it is appealing Permit Condition 2.7, Petition at 6 fn.2, the Petition merely cites and reiterates comments Petitioner made on the draft permit. 40 C.F.R. § 71.11(i)(1)(i); *In re City of Taunton Dep’t of Pub. Works*, 2016 EPA App. LEXIS 25, *8 (May 3, 2016) (“The Board consistently has denied review of petitions that merely cite, attach, incorporate, or reiterate comments previously submitted on the draft permit.”) (citations omitted).

Red Dog Mine, 2010 EPA App. LEXIS 25 (April 30, 2010) (involving an NPDES permit and 40 C.F.R. Part 124), each of the specifically contested provisions of the Veolia Title V Permit, which are the basis for the alleged defects in the notice and comment process, are severable from the remaining provisions of the Permit. In *Teck Alaska*, the petitioners argued that a stay of the entire permit was required due to their broad challenge to the permit based on the Region's reliance on the State's "illegal" section 401 certification pursuant to Clean Water Act Section 401. *Teck Alaska* at *16. The Board found that the "broad challenge" was directly linked to specific permit provisions, and so a stay of the entire permit was not warranted. *Teck Alaska* at *17-18.

In this case, Petitioner's notice and comment allegations, which are styled broadly, relate only to those Permit terms that changed between the draft and final permits and the provisions related to the enhanced feedstream analysis procedures (enhanced FAP) and multi-metals monitoring requirements. The Petition outlines six "significant changes" between the draft and final permit. Petition at pp. 28-29. Those permit changes and the provisions related to the enhanced FAP and multi-metals monitors are all related to the monitoring and testing requirements in the hazardous waste combustor subsection of the Permit (Section 2.1(D)). Similar to the *Teck Alaska* matter, only those few sections of the Permit are automatically stayed under 40 C.F.R. § 71.11(i)(2)(ii). Even if the alleged notice and comment defects are proven true (and the Region strongly believes that they will not be proven true), those defects do not automatically "infect" the entire Title V permitting decision, as Petitioner asserts.

Nonetheless, as Petitioner indicated in the Motion, the Region has no objection to the Board granting the broader relief requested in the Motion if the Board deems it appropriate.

Respectfully submitted,



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