

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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ENVIR. APPEALS BOARD

In the Matter of:)

Blue Plains Wastewater Treatment Plant,)
NPDES Permit No. DC0021199)

NPDES Appeal Nos.: 07-10, 07-11, 07-12

**FRIENDS OF THE EARTH AND SIERRA CLUB'S
MOTION TO INTERVENE AS PARTIES RESPONDENT AND FOR
LEAVE TO RESPOND TO THE DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY'S PETITION FOR REVIEW**

Pursuant to 40 C.F.R. §22.11(a), Friends of the Earth (FOE) and Sierra Club ("Petitioners") hereby move for leave to intervene in the District of Columbia Water and Sewer Authority's ("WASA") petition for review of the Blue Plains Wastewater Treatment Plant NPDES Permit No. DC0021199, NPDES Appeal No. 07-11, and for leave to respond to the issues raised therein.¹ In support of their motion, the Petitioners submit the following.

1. The U.S. Environmental Protection Agency ("EPA") reissued NPDES Permit No. DC0021199 ("the permit") to WASA on April 5, 2007. The permit, last reissued December 16, 2004, governs the discharge of municipal wastewater from the Blue Plains Wastewater Treatment Plant (Blue Plains) and the discharge of wastewater and stormwater from WASA's combined sewer system (CSS), located within the District of Columbia.

¹ The Petitioners filed a petition for review of the Blue Plains NPDES permit with the EAB on May 7, 2007 (NPDES Appeal No. 07-12), and a third appeal of the Blue Plains NPDES permit was filed by the Chesapeake Bay Foundation (NPDES Appeal No. 07-10). The Clerk of the EAB has informed the undersigned that all three appeals pertaining to this permit have been combined in the EAB docket for administrative purposes only, but have not been consolidated.

2. WASA sought review of the permit on May 7, 2007, to contest: (1) EPA's allocation of the final total nitrogen limit; (2) EPA's decision to include in the permit a total nitrogen limit rather than a total nitrogen effluent goal, and (3) EPA's decision not to include a compliance schedule in the permit.

3. The Petitioners did not seek review of the issues raised by WASA's petition, and are not named as parties in WASA's petition. Therefore, the Petitioners seek leave to intervene and for leave to file a response to WASA's appeal.

4. Intervention in this proceeding is governed by EPA's Consolidated Rules of Practice set forth in 40 C.F.R. § 22, and in particular by 40 C.F.R. § 22.11(a):

(a) Intervention. Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to Sec. 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. . . . The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties.

5. The Petitioners have a substantial interest in WASA's petition for review, as is discussed in the Petitioners' NPDES Appeal 07-12. The Petitioners have been involved in multiple appeals of previous versions of the Blue Plains NPDES permit, have commented on every draft version of the permit, and have litigated to ensure that the permit meets all requirements of the CWA and the District's water quality standards. Rather than repeat the detailed history of the Petitioners' involvement and interest in this matter, the Petitioners hereby incorporate by reference their May 7, 2007 petition for review, NPDES Appeal No. 07-12. In short, the Petitioners have demonstrated a longstanding and strong interest in ensuring that the permit is fully protective of water quality in the District.

6. Absent their participation and opportunity to file a response to the issues raised in WASA's petition for review, the Petitioners' ability to protect their interests may be impaired. Among other things, petitioners have longstanding disagreements with the Region over legal requirements for the permit and steps needed to protect receiving waters. Petitioners therefore need to be able to oppose WASA's petition on all appropriate grounds, not just those that EPA may chose to raise.


7. The Petitioners' interests are not adequately represented by the permitting authority EPA Region 3, or by the permittee WASA. For one, the Petitioners and WASA already hold divergent positions concerning several of the permit conditions WASA challenges in its appeal, as demonstrated by the Petitioners' comments on the proposed permit modifications dated January 19, 2007. Further, the Petitioners represent citizens who use and enjoy the waters impacted by WASA's pollutant discharges and who are concerned about and seek greater reduction of those discharges. Finally, the Region's position with respect to its obligations to modify the permit and impose certain conditions differs markedly from that of the Petitioners. Petitioners have repeatedly challenged the Region's permits as not being protective enough of water quality in the District and downstream, and have repeatedly disagreed with the Region's construction of key provisions of the Clean Water Act. For these reasons, the Petitioners' interests are not adequately represented by either WASA or the Region.

8. The Petitioners' motion and request to respond is timely. No substantive proceedings have occurred, and the Region and WASA have not yet filed responses to the Petitioners' own appeal. If the Board grants this motion, the Petitioners will file a response within the time specified by the Board for the EPA to respond. Further, the Petitioners' participation in this matter will not delay this proceeding.

Conclusion

For all the foregoing reasons, the Petitioners ask the Board to grant leave to intervene in WASA's appeal of the Blue Plains Waste Water Treatment Plant NPDES permit (NPDES Permit No. DC0021199, NPDES Appeal No. 07-11), and for leave to file an appropriate response on the date ordered by the Board for EPA to respond.

DATED this 26th day of June, 2007.



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In the Matter of:)		
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Blue Plains Wastewater Treatment Plant,)		NPDES Appeal Nos.: 07-10, 07-11, 07-12
NPDES Permit No. DC0021199)		
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**ORDER GRANTING FRIENDS OF THE EARTH AND SIERRA CLUB
LEAVE TO INTERVENE AND TO FILE A RESPONSE TO WASA'S APPEAL**

Friends of the Earth and Sierra Club (Petitioners) have filed a Motion to Intervene and for Leave to Respond to the District of Columbia Water and Sewer Authority's Petition for Review, NPDES Appeal No. 07-11.

For the reasons stated in the Petitioners' motion, the Petitioners' motion is hereby GRANTED, and the Petitioners are granted leave to file a response to WASA's petition for review on or before the date ordered by the Board for EPA to respond.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

By: _____

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Review were served on each of the following by first-class mail, postage prepaid, on June 26, 2007:

Regional Administrator
EPA Region 3
1650 Arch Street
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Deane Bartlett
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A handwritten signature in cursive script, appearing to read "J. E. Cy", is written over a horizontal line.