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2006 AUG 21 PM 1:37
ENVIR APPEALS BOARD

EPA REGION III

To: Ms. Eureka Dawn

at FAX No: 202/233-0121

Date: 8/21/06 Number of pages (including cover): 6

Subject: Blue plans 05-01 + 05-02
Motion on Consent to Dismiss

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

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ENVIR. APPEALS BOARD

August 21, 2006

Via Telefax and Federal Express .

Ms. Eurika Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G Street N.W. , Suite 600
Washington, DC 20005

Re: Respondent's Motion on Consent to Dismiss
EAB Consolidated Appeals Nos. 05-01 and 05-02

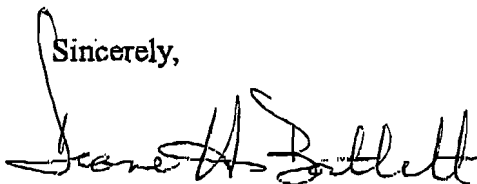
Dear Ms. Durr:

Enclosed please find one original and five copies of the above referenced document, which I am also serving on counsel for Petitioners in this matter.

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

Thank you for your attention to this matter.

Sincerely,



Deane H. Bartlett
Senior Assistant Regional Counsel

Enclosure

cc: telefax and regular mail (with enclosure):
David Baron, Esquire - EarthJustice Legal Defense Fund
David Evans, Esquire - McGuireWoods LLP

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

AUG 21 PM 1:37

In re:)	
)	
Blue Plains Wastewater Treatment Plant)	
)	NPDES Appeal Nos. 05-01 and
)	05-02
NPDES Permit No. DC 0021199)	Consolidated
)	
)	

MOTION ON CONSENT TO DISMISS

Region III of the Environmental Protection Agency (EPA), Respondent in NPDES consolidated Appeals No. 05-01 and 05-02, with the consent of both of the Petitioners, District of Columbia Water and Sewer Authority (WASA), and Friends of the Earth and the Sierra Club (FoE/SC), hereby moves the Board to dismiss the pending Petitions for Review as follows: dismiss Petition 05-01 in its entirety, and dismiss Petition 05-02 as to all issues, except for the Petitioners request for review of EPA's decision not to include a compliance schedule for implementation of its Combined Sewer Overflow Long Term Control Plan in the Permit, which, by agreement of the parties, shall be stayed. Such dismissals shall be without prejudice. In support of this motion, EPA asserts:

1. On December 16, 2004 EPA issued a final modification to NPDES Permit No. DC 0021199 to (Permit) WASA, covering discharges from WASA's wastewater collection system and the Blue Plains Wastewater Treatment Plant. WASA and FoE/SC have pending consolidated petitions for review of certain provisions of the December 16, 2004 modified Permit.

2. The present deadline for EPA to file its response to the consolidated petitions is August 17, 2006.

3. On August 10, 2006, EPA filed a Notice of Partial Permit Withdrawal with the Board, whereby EPA has withdrawn the contested modified Permit provisions: Part III. Section E. 1 through 4, and stated its intent to propose modifications to those provisions. EPA has thereby withdrawn all of the permit provisions contested by WASA and FoE/SC. The only remaining issue before the Board is WASA's assertion that EPA should have included a schedule for implementation of the conditions of the Permit requiring WASA to implement the Combined Sewer Overflow Long Term Control Plan (LTCP) in the Permit.

4. There are no remaining contested permit provisions in the existing appeals and therefore no active matters before the Board, with the exception of the remaining WASA issue.

5. EPA has consulted with counsel for WASA and counsel for FoE/SC and the Petitioners consent to the dismissal of their Petitions for Review, without prejudice as to the issues presented, except for WASA's request that the Board review EPA's decision not to include a compliance schedule for the conditions of the Permit requiring WASA to implement the LTCP. The parties request that the Board stay EPA's deadline to respond to this issue (in Petition No. 05-02) for 180 days in the interests of efficiency. Depending on the nature of final EPA action on its new proposed modification, WASA may yet dismiss its challenge on this issue. Therefore, adjudication on this issue would be premature and the issue should be stayed. On or before the end of the stay period, EPA and WASA shall report to the Board on the status of that issue and whether the matter should proceed for consideration by the Board.

For the foregoing reasons, EPA respectfully moves the Board to dismiss Appeal Nos. 05-01 and 05-02, except as to the remaining issue in Petition 05-02. Dismissal will not in any way

prejudice any rights the Petitioners may have to petition for review of the final subsequent modifications to the Permit.

Respectfully submitted,

Date 8/21/06



Deane H. Bartlett
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OF COUNSEL:
Stephen J. Sweeney, Esquire
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

CERTIFICATE OF SERVICE

I hereby certify that Respondent's Motion on Consent to Dismiss, was served on this date as set forth below:

The original was telefaxed to 202/233-0121 and the original and five copies were mailed by Federal Express to:

Ms. Eureka Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building
1341 G. Street, N.W., Suite 600
Washington, DC 20005

One copy each was telefaxed and mailed by regular mail, postage prepaid to counsel for Petitioners:

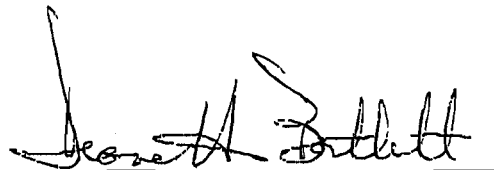
Friends of the Earth and Sierra Club:

David S. Baron, Esq.
Earthjustice Legal Defense Fund
1625 Massachusetts Ave., NW Suite 702
Washington, DC 20036-2212

District of Colombia Water and Sewer Authority:

David E. Evans
McGuireWoods LLP
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Date: 8/21/06



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