ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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 REPLY TO RESPONSES BY EPA REGION 3 AND WASA REGARDING PETITION FOR REVIEW OF EPA'S GRANT OF NPDES PERMIT FOR THE BLUE PLAINS WASTEWATER TREATMENT PLANT

Friends of the Earth and Sierra Club (collectively "FOE/SC") hereby reply to the U.S. Environmental Protection Agency Region 3 ("EPA" or the "Region") and the District of Columbia Water and Sewer Authority ("WASA") in response to FOE/SC's May 7, 2007 petition for review. That petition requested the Board to review the Region's April 5, 2007 issuance of a final permit for discharges from the Blue Plains Waste Water Treatment Plant and the D.C. combined sewer system ("final permit"). EPA's final permit violates EPA rules requiring the Region to provide public notice and opportunity to comment on permit actions, 40 C.F.R. § 124.10. The final permit also violates the Clean Water Act's (CWA) requirement that permits ensure compliance with applicable water quality standards, 33 U.S.C. § 1311(b)(1)(C); and violates the Act's anti-backsliding provision, set forth at 33 U.S.C. § 1342(o)(1). Therefore, FOE/SC ask that the Permit be remanded to the Region for correction of these deficiencies.

I. EPA'S DELETION OF THE WATER QUALITY STANDARDS LANGUAGE FROM THE FINAL PERMIT WAS A "SURPRISE SWITCHEROO" THAT VIOLATED NOTICE AND COMMENT REQUIREMENTS.

Under the Administrative Procedure Act (APA) and CWA regulations, the Region must provide public notice and solicit comments on a draft NPDES permit. *See* 40 C.F.R. 124.10;

Westvaco Corp. v. EPA, 899 F.2d 1383, 1384 (4th Cir. 1990); NRDC v. EPA, 279 F.3d 1180 (9th Cir. 2002). The agency may take a final action that differs from the original proposal only if the final action was a "logical outgrowth" of the proposal. *See City of Waukesha v. EPA,* 329 F3d 228, 245 (D.C. Cir. 2003) ("Under other statutes that have altered the notice-and-comment format for rulemaking, such as the Clean Air Act, the court has held that the 'logical outgrowth' test is applicable"). A final action is a "logical outgrowth" of a proposal "only if interested parties " 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Environmental Integrity Project v. EPA,* 425 F.3d 992, 996 (D.C. Cir. 2005) *citing Shell Oil Co. v. EPA,* 950 F.2d 741, 750-51 (D.C.Cir.1991) and *Northeast Maryland Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C.Cir.2004). In *Environmental Integrity Project v. EPA,* the court stated:

> The " logical outgrowth" doctrine does not extend to a final rule that finds no roots in the agency's proposal because " [s]omething is not a logical outgrowth of nothing," *Kooritzky* [*v. Reich*], 17 F.3d [1509] at 1513 [(D.C. Cir. 1994)], nor does it apply where interested parties would have had to "divine [the agency's] unspoken thoughts," *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299 (D.C.Cir.2000) (quoting *Shell Oil*, 950 F.2d at 751), because the final rule was "surprisingly distant" from the Agency's proposal.

Environmental Integrity Project, 425 F.3d at 996. "Whatever a 'logical outgrowth' of [the] proposal may include, it certainly does not include the Agency's decision to repudiate its proposed interpretation and adopt its inverse." *Id.* at 998.

Thus, federal courts "have refused to allow agencies to use the rulemaking process to pull a surprise switcheroo on regulated entities." *Environmental Integrity Project v. EPA*, 425 F.3d at 996 (remanding a rule where the proposal "*requires* case-by-case supplementation of permits with insufficient monitoring, regardless of whether the permit also requires periodic monitoring," but under the final rule "authorities are now *prohibited* from adding new monitoring

requirements" (emphasis in original)). *See also International Union, UMWA v. MSHA*, 407 F.3d 1250, 1261 (D.C.Cir.2005) (finding that the agency failed to provide adequate notice where "the Agency's proposed rule provided that '[a] minimum air velocity of 300 feet per minute must be maintained' to ventilate underground coal mines" but the final rule "provided that '[t]he maximum air velocity in the belt entry must be no greater than 500 feet per minute, unless otherwise approved in the mine ventilation plan'").

Since 1997, the NPDES permit governing effluent discharges from Blue Plains has contained a narrative prohibition protecting waters from "discharge in excess of any limitation necessary to meet the water quality standards established pursuant to District of Columbia law." EPA Response at 35-36. In its August 16, 2006 proposal to modify the existing permit, the Region proposed to add language modifying the water quality standards provision so that its applicability would terminate some time in the future, after WASA has certified to the Region that it completed specified actions relating to the District's Long Term Control Plan ("LTCP") for combined sewer overflows. EPA Response at 39. However, in a sharp departure from its proposal, the Region instead *deleted* the existing water quality-based protections, effective immediately. *See* EPA Response at 39 (July 5, 2007).

The Region does not deny that it issued the final permit without publishing advance notice and a chance to comment on the Region's intention to delete the water quality standards language. *See id.* Nor does the Region deny that its decision to delete the language was based solely on WASA's comments that the provision is "unnecessary," without the Region having solicited comment on that proposal from the public. *Id.* Nonetheless, EPA now argues that its final action was "reasonably foreseeable," that its final permit language was a "logical outgrowth" of the proposed language, and that "FOE/SC has had actual notice that the final

language was a possibility." The Board should reject these farfetched rationalizations, as have numerous federal courts in similar situations, because the Region's August 2006 proposal failed to provide *any* notice of the approach taken in its final permit.

B. The Region's Decision to *Delete* the Existing Water Quality Standards Language From the Permit Was Not a "Logical Outgrowth" of the Region's Proposal

EPA attempts to justify its action by arguing that:

> "there was logical outgrowth because the final language, was, in fact, part of the proposal. The Region simply eliminated the second sentence of the proposed provision, having concluded that it was inconsistent with the CSO Policy requirements for Phase II permits."

EPA Response at 41. This argument is highly disingenuous, because it implies that the deleted language was merely part of a larger "proposed provision," and that EPA simply decided not to retain the second sentence in that proposed provision. *See id.* In reality, however, the language that EPA deleted from the final permit has existed in the permit as the water quality-based effluent limitation for discharges from Blue Plains for over a decade.[1] Consequently, nothing short of an explicit statement of intent to delete the water quality standards language would have put the public on notice that the existing the provision was on the proverbial chopping block. Mere "references" to the broad issue are not sufficient to put the public on notice. *See NRDC v. EPA*, 279 F.3d 1180 (9th Cir. 2002) ("[N]uance and subtlety are not virtues in agency notice practice. If the EPA were contemplating approving entirely new constructs for allowable zones of deposit and departing from the ATTF guidelines, it should have said so explicitly.")

The Region's flip-flop deprived FOE/SC and others of the opportunity to comment on the final permit. FOE/SC submitted comments responding appropriately to the August 2007 proposal –

[1] *See* EPA Response at 35 (stating that "[t]he last fully effective permit, issued in January 1997, contained this narrative effluent limit"). EPA retained a similar provision in the January 24, 2003 proposal (*see* EPA Response at 36); in the March 13, 2004 proposal (*id.* at 37); and, after a departure in the December 2004 proposal, which EPA eventually withdrew, again the Region's August 16, 2007 proposal contained the same language (albeit with additional proposed language that purported to terminate its applicability in the future). EPA Response at 39.

which proposed to *add* a different water quality-based limitation to the permit that derives from the LTCP controls. EPA Response at 39. Under the Region's proposal, the new provision would supersede the existing provision many years into the future after "such time as all of the selected CSO controls set forth in the [LTCP] have been placed into operation, and the Permittee so certifies to the EPA." *See* Comments dated October 5, 2006, Ex. 1 to FOE/SC Petition for Review at 2. However, at no time did EPA ever propose to *delete* the existing language entirely from the permit, before the LTCP controls are even implemented much less ground-truthed. Without having received notice that the Region contemplated eliminating that language, FOE/SC and others in the public had no reason to suspect that the Region would delete the language immediately, and therefore no reason to submit comments regarding such action.

EPA wrongly argues that "there is nothing in the FOE/SC Petition to suggest that these arguments would have been different had there been another opportunity to comment." EPA Response at 41. Much to the contrary, it is highly significant that the Region's proposal proposed to terminate the applicability of the water quality standards language some time in the future, while the final permit deleted the provision effective immediately. Had the Region provide proper notice that it contemplated deleting the water quality standards provision immediately, FOE/SC and others could have submitted comments and evidence demonstrating the illegality of that specific course of action, including evidence of present violations of water quality standards. Petitioners would also have submitted evidence of why water quality standards protection is needed prior to LTCP completion, including evidence that such language is needed to ensure that WASA adequately maintains and operates its existing CSO system to prevent overflows, and the severe threats to public health and the environment presented by such overflows.

Even if the LTCP – once built – could be expected to assure full compliance with water quality standards at all times (and the discussion below shows it will not), the proposed permit language provided continuing protection against violations of water quality standards during the interim before the LTCP controls are implemented. Moreover, a proposal to terminate standards protection immediately is radically different than one to terminate such protection 20 years or more in the future (the expected implementation time frame for the LTCP). Had petitioners known that EPA intended such a radical, immediate step, they would have offered much more extensive evidence of the LTPC's inadequacy to meet standards. Moreover, under the proposed permit's approach, FOE/SC and others would have had 20 years to monitor the implementation of the LTCP controls and, as appropriate, submit additional evidence to persuade the Region in future permit modification proceedings that deletion of the language would be unjustified because the LTCP controls were not sufficient to assure attainment of standards. However, the Region's proposal lulled the public into believing that the Region intended at least to maintain continuing protection against water quality standards violations until such time as the District certified that the LTCP controls were in place. This action was fundamentally unfair, for "[i]f the APA's notice requirements mean anything, they require that a reasonable commenter must be able to trust an agency's representations about *which particular* aspects of its proposal are open for consideration." *Environmental Integrity Project v. EPA*, 425 F.3d at 998.

C. FOE/SC Were Not Required to Divine the Thoughts of the Region by Anticipating That The Region Would Delete the Existing Language.

EPA suggests that FOE/SC should have foreseen the final rule because FOE/SC participated in negotiations "to develop a WQBELs for CSO discharges that would satisfy all parties. Therefore, FOE/SC had ample notice of the Region's thinking on this issue." EPA Response at 41. The Region argues that since this provision has been contentious in the past,

FOE/SC "has had actual notice that the final language was a possibility." EPA Response at 40. For its part, WASA argues that "FOE/SC had opportunity to comment on the deletion of the WQS language because the provision was "on the table" for possible further amendment, and FOE/SC "should have anticipated" the change since WASA in its own comments argued that the language should be deleted. *See* WASA Response at 13 (July 6, 2007).

However, in similar situations courts have rejected such disingenuous arguments. *See Environmental Integrity Project v. EPA*, 425 F.3d at 998. There, the court rejected EPA's argument "that it met its notice-and-comment obligations because its final interpretation was also mentioned (albeit negatively) in the Agency's proposal."

> [T]his argument proves too much. If the APA's notice requirements mean anything, they require that a reasonable commenter must be able to trust an agency's representations about *which particular* aspects of its proposal are open for consideration . . . . A contrary rule would allow an agency to reject innumerable alternatives in its Notice of Proposed Rulemaking only to justify any final rule it might be able to devise by whimsically picking and choosing within the four corners of a lengthy " notice." Such an exercise in " looking over a crowd and picking out your friends,". . . does not advise interested parties how to direct their comments and does not comprise adequate notice under APA § 553(c).

Id. (Emphasis in original). Courts have likewise rejected WASA's implication that FOE/SC were required to speculate though a chain of events in order to "divine [the agency's] unspoken thoughts." *Environmental Integrity Project v. EPA*, 425 F.3d at 996. Moreover, it is well settled that "EPA 'cannot bootstrap notice from a comment'". *Id.* citing *International Union,* 407 F.3d at 1261 ("Although '[t]here were some comments during the hearings urging the Secretary to set a maximum velocity cap,' we vacated the final rule because the Agency 'did not afford a ... public notice of its intent to adopt, much less an opportunity to comment on, such a cap"). *See also Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) ("Even if the [final rules] had been

widely anticipated, comments by members of the public would not in themselves constitute adequate notice.") (internal quotes omitted).

The simple fact is that no reasonable person reading the proposed permit in this matter could plausibly have guessed that the Region was considering an option entailing immediate termination of the permit's pre-existing water quality standards language. None of the documents accompanying the proposal even hinted that the Region was considering such a radical departure from the language in the proposed in the permit. Indeed, the Region had *never* before proposed the extreme approach of entirely eliminating from the permit protections for narrative water quality standards.[2]

III. DELETION OF THE EXISTING WATER QUALITY LIMITATION VIOLATES THE ANTI-BACKSLIDING PROHIBITION, AND IS NOT JUSTIFIED BY SUBSTITUTION OF THE LTCP PERFORMANCE STANDARDS

Because the Region failed to provide adequate notice of its final rule, the Board should remand the permit without reaching the other arguments EPA has raised in defense of its decision to delete the water quality standards language. *See Environmental Integrity Project* 425 F.3d at 996. However, even if the Board hears EPA's arguments, the permit must be remanded because deletion of the water quality standards language violates the Act's anti-backsliding provision 33 U.S.C. § 1342(o)(1), and its requirement that permits ensure compliance with applicable water quality standards, set forth at 33 U.S.C. § 1311(b)(1)(C).

A. The Final Permit is *Necessarily* Weaker Because it Provides No Legal Protection Against Violation of Standards Until The LTCP Controls Are Implemented, or Afterward Should The Controls Fail to Ensure Compliance with Standards

The Region argues that the final permit falls under an exception to the CWA's anti-backsliding prohibition in § 402(o)(1) of the Act, 33 U.S.C. §1342 (o)(1). The anti-backsliding

[2] EPA in its December 16, 2004 permit proposed to modify the permit to confine protection to a more limited set of District of Columbia narrative water quality standards, but later dropped the proposal after the Petitioners pointed out the illegality of this approach.

provision prohibits modification of a NPDES permit to contain effluent limits based on §301(b)(1)(C) of the Act ("water quality based limits") that are less stringent than the comparable effluent limits in the previous permit. EPA regulations contain a similar prohibition. 40 C.F.R. §122.44(l).

The new language is not "simply a more specific articulation of what the permittee must do to meet the same requirement that was in the previous permit: to control its discharges as stringently as necessary to meet WQS." *Cf.* EPA Response at 43-44. Rather, the new language eliminates the direct, straightforward prohibition against discharges that exceed limitations necessary to meet standards, and adopts in it place as set of performance standards associated with the LTCP, which the Region and WASA claim will be the *means* for achieving compliance with standards. EPA Response at 39, 44. However, the requirement to comply with the LTCP performance standards – which will not alone assure compliance with the District's water quality standards – simply cannot substitute for the existing direct prohibition against discharges that exceed limitations necessary to meet standards. Because construction of the LTCP controls will not be completed for many years, the final permit as the Region has modified it provides no protection from water quality standards violations in the interim. This alone violates anti-backsliding. Moreover, there has been no showing that the LTCP performance standards will alone be sufficient to assure compliance with water quality standards, and indeed the evidence in the record demonstrates the contrary.

B. The Region Provides No Rational Explanation for its Conclusion That the Performance Standards Associated With the LTCP Presently Assure Compliance With the Applicable Water Quality Requirements of all Affected States

The final rule also violates the CWA because the performance standards have not been shown to "assure attainment" of water quality standards. This duty arises under 33 U.S.C.

§1311(b)(1)(C), which requires the permit to contain any effluent limitations necessary to meet D.C. water quality standards; under 40 C.F.R. §122.4(d), which requires that permit conditions must "ensure" compliance with applicable water quality requirements; and under to 40 C.F.R. §122.44(d), which requires the permit to contain any requirements necessary to achieve state water quality standards, including narrative criteria. FOE/SC's petition for review contains a detailed discussion of the LTCP's failure to satisfy those requirements (*see* pgs. 12-14).

EPA argues that its final permit falls within CWA § 303(d)(4)(A), which allows the Region to adopt different water quality-based effluent limitations if they will "assure the attainment of such water quality standard." That provision, however, applies only to modification of an effluent limitation based on a TMDL or wasteload allocation. The narrative water quality standards language in the pre-existing permit here plainly is not a TMDL or WLA-based limitation. Moreover, the new permit language does not in fact assure attainment of water quality standards. Both WASA and EPA cite several memoranda dated November 2004, in which the District and EPA asserted that the LTCP is consistent with the EPA's 1994 Combined Sewer Overflow ("CSO") Control Policy and purported to make a finding "that implementation of the CSO controls set forth in the LTCP are adequate to achieve WQS." *See* EPA Response at 44, 46, WASA Response at 17. However, these memoranda fail to overcome the overwhelming evidence that the LTCP selected control will not assure compliance with water quality standards. Among other things:

1. The memoranda are based on the legally incorrect notion that the LTCP selected controls need not maintain the standard's primary contract recreation beneficial use designation under all wet weather conditions. *Id.* In reality, the District's water quality standards do not waive designated uses such as swimming during wet weather conditions or at any other time.

See District of Columbia Water Quality Standards, 21 DCMR § 1100 *et seq.*, 52 D.C. Reg. 9621 (October 28, 2005), EPA Region III Administrator, Letter to D.C. Dept. of Health regarding October 28, 2005 water quality standards revisions, (February 15, 2006).

2. The memoranda fail to address the fact that, as WASA itself concedes, the LTCP and selected CSO controls were developed based on "average rainfall conditions," not all rainfall conditions. *Id.* at 7, 8. The LTCP itself concedes that the selected controls will *not* assure compliance with water quality standards under all wet weather conditions. LTCP 14-1; FOE/SC Petition at 13-14.

3. The memoranda contain no factual analysis that even attempts to overcome the LTCP's own concession that the selected controls will not assure compliance with standards. The statements in the memoranda cited by the Region and WASA are unsupported and unexplained conclusory assertions, not supported by substantial evidence or rational explanation. The absence of factual support or a rational explanation renders arbitrary and capricious any claim by the Region that the LTCP will assure compliance with standards. Moreover, the record does not in fact support any such claim. It is undisputed the LTCP will still allow millions of gallons of raw sewage overflows during rain events exceeding a 1 year storm intensity. It is further undisputed that bacteria and other pollution levels in these overflows exceed D.C. water quality standards by wide margins. *See* FOE/SC Petition for Review at 12-13 (May 7, 2007); FOE/SC Comments on Proposed NPDES D.C. 0021199 (October 5, 2006), incorporated by reference in FOE/SC Comments on Second Proposed NPDES D.C. 0021100 (January 19, 2007). Because no mixing zones have been established for these discharges, they must meet standards at the outfall, something they plainly do not do.

4. The District's narrative standards require Class A waters to be free of discharges untreated sewage. 21 DCDR 1104.3 ("Class A waters shall be free of discharges of untreated sewage, litter and unmarked, submerged or partially submerged, man-made structures..."). It is undisputed that the selected LTCP controls will still allow substantial sewage overflows that will unquestionably contain raw human sewage. These overflows will occur into the Anacostia, the Potomac, and Rock Creek, all Class A waters protected by the narrative standard. Thus, the LTCP plainly will not assure compliance with the District's narrative standards. The Region cites a memorandum by a District employee claiming that raw sewage overflowing from WASA outfalls can be deemed "partially treated" merely by virtue of passing through large baffles and screens to remove large floatable materials. This farfetched claim is refuted by long settled definitions of sewage "treatment" under the Clean Water Act as comprising primary, secondary, or tertiary levels of pollutant removal -- not the mere installation of a baffle or large screen at the end of an outfall pipe. See, e.g., 33 U.S.C. §1311(b)(1)(B), 1314(d)(1). Moreover, a grate or screen would at most catch litter – a type of pollutant that is separately limited under D.C.'s narrative standards. 21 DCMR 1104.3. The standards require Class A waters to be free from discharges of "litter" as well as "untreated sewage." *Id.* Thus, the standards plainly do not equate litter removal with sewage "treatment."[3] In any event, the District employee's memo is merely the opinion of one person: It is not a rule and certainly cannot overcome the plain

[3] The District staff member's memorandum cites an EPA Fact Sheet that discusses actual sewage treatment techniques such as oxidization, ozonation, ultraviolet radiation, and other techniques; while it mentions only in passing that "preliminary reduction" of pollutants can be accomplished through removal of large solids. EPA CSO Technology Fact Sheet on Alternative Disinfection Methods at 1, EPA 832 F-99-033, avail. at http://www.epa.gov/owm/mtb/altdis.pdf. Neither this, nor EPA's CSO Technology Fact Sheet on Screens, EPA 832-F-99-040, suggest that use of baffles or screens as a way to accomplish "preliminary reduction" of large solids is constitute actual sewage *treatment* techniques. *See also* McGraw-Hill Dictionary of Scientific and Technical Terms, 6th ed. avail. online at http://www.answers.com/library/Sci%252DTech%20Dictionary-cid-1877941274 (defining "sewage treatment" as: "(civil engineering) A process for the purification of mixtures of human and other domestic wastes; the process can be aerobic or anaerobic.")

language of the District's federally approved water quality standards. Moreover, even if mere litter removal could somehow convert raw, untreated sewage into treated sewage, the LTCP does not in fact commit to such a strategy. The memo cites Section 13.3.4 of the LTCP, however that section only discusses steps that WASA may take in the future to reduce large floatable materials – it does not contain any specific commitment to install and maintain screens or baffles at every single CSO outfall.

For all the above reasons, merely requiring WASA to comply with the LTCP performance standards is plainly not as stringent, much less "*more* stringent" than the previous direct prohibition against discharging in excess of any limitation necessary to meet standards. *Cf.* EPA Response at 44. The LTCP will reduce combined sewer overflows so as make progress toward complying, but implementation of LTCP performance standards alone will not ensure or require compliance with water quality standards.

C. There is No Legal Basis for WASA's Assertion that the Existing Water Quality Standards Provision is Inconsistent with EPA's CSO Control Policy

Contrary to WASA's assertions, EPA's 1994 CSO Control Policy does not compel the Region to *replace* the existing water quality standards language when it incorporates the LTCP performance standards in the permit. *Cf.* WASA Response at 15. WASA cites a section in the CSO Policy that calls for EPA to include in revised NPDES permits "water quality-based effluent limits . . . requiring *at a minimum* compliance with . . . the numeric performance standards for the selected CSO controls . . . ." 59 Fed. Reg. 18688, 18696 (April 19, 1994) (emphasis added). WASA also cites CWA § 402(q) which implements the CSO control policy. However, neither of these compels EPA to eliminate other existing water quality-based limitations from permits. Much to the contrary, the CSO Policy states that "Permittees *will be expected to comply with any existing CSO-related requirements in NPDES permits*, consent

decrees or court orders unless revised to be consistent with this Policy." *Id.* at 18688-89 (emphasis added). Nothing suggests that deleting a valid requirement to comply with WQS is consistent with the CSO Policy. Nor is there any statement, either in the CSO Policy or in CWA § 402(q), that suggests Congress intended for the LTCP controls to supersede other existing water quality-based requirements for NPDES permits. There is no justification for reading such an interpretation into CWA § 402(q) or the CSO Policy where it simply does not exist.

It appears that WASA's objection to retaining the water quality standards language arises from its desire to have a "permit shield" of sorts. In comments WASA expressed its concern that the water quality standards provision "unfairly exposes WASA to liability for permit noncompliance." Final Response to Comments, unnumbered pg. 6 (April 5, 2007). Again in its response to FOE/SC's petition for review WASA argues that the deleted language "served no purpose other than to unfairly expose WASA to permit non-compliance." WASA Response at 18. Significantly, this argument reveals WASA's belief that the existing water quality standards provision is more stringent than the new one, at least until WASA demonstrates post-construction compliance with WQS. However, even the Region rejected WASA's argument, stating in its response to comments that "[t]o the extent that this comment asserts that the proposed permit provision exposes the permittee to liability for permit non-compliance, this does not address a legal basis upon which to object to the permit condition." Final Response to Comments at unnumbered pg. 6.

Conclusion

For all the foregoing reasons, FOE/SC ask that the final permit be remanded to the Region for correction of the deficiencies specified in their petition for review.

DATED this 23th day of July, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply to Responses by EPA Region 3 and WASA Regarding Petition for Review of EPA's Grant of NPDES Permit for the Blue Plains Wastewater Treatment Plant** was served on each of the following by first-class mail, postage prepaid, on July 23, 2007:

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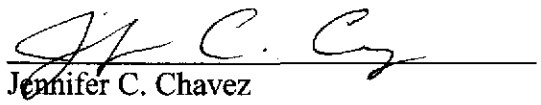

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