

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

In re:)	
)	
Veolia ES Technical Solutions, LLC)	CAA Appeal No. 19-01
)	
Permit No. V-IL-1716300103-2014-10)	
)	
)	

**ORDER GRANTING INTERVENTION, ESTABLISHING
 BRIEFING SCHEDULE, AND SPECIFYING FILING PROCEDURES**

On July 17, 2019, the American Bottom Conservancy filed with the Environmental Appeals Board (“Board”) a petition challenging a permit issued by Region 5 of the U.S. Environmental Protection Agency (“Region 5”) to Veolia ES Technical Solutions, LLC (“Veolia”) under subchapter V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, and part 71 of title 40 of the Code of Federal Regulations.¹ Veolia filed a motion to intervene in this appeal and “meaningfully participate in the substantive briefing” on the issues raised by the American Bottom Conservancy’s petition. Veolia ES Technical Solutions, LLC, Motion to Intervene and Request for Briefing Schedule 3 (July 22, 2019). Veolia’s motion also requests that the Board establish a briefing schedule for responses to the petition that grants Veolia no less than 45 days for filing its response. *Id.*

¹ Another petition has also been filed with the Board challenging this permit. RoseMary Howard, Petition (July 17, 2019). Currently, the Board has not consolidated these petitions. Accordingly, this Order pertains only to the petition filed by the American Bottom Conservancy.

I. INTERVENTION

Intervention by the permittee or other entities is not addressed in 40 C.F.R. § 71.11(l), which specifies the procedures for appeal of permits issued under part 71. On issues as to which section 71.11(l) is silent, the Board looks to EPA's permit appeal regulation in 40 C.F.R. § 124.19 and cases decided under that provision as instructive and precedential for permit appeals under part 71. *See, e.g., In re Peabody W. Coal Co.*, 15 E.A.D. 757, 767 n.11 (EAB 2013); *In re Peabody W. Coal Co.*, 14 E.A.D. 712, 718-21 (EAB 2010). Section 124.19 expressly allows permittees who did not file a petition to participate in a permit appeal proceeding by filing a notice of appearance and a response to the petition.² 40 C.F.R. § 124.19(b)(3). Accordingly, consistent with section 124.19, we grant Veolia's motion to intervene.³

II. RESPONSES TO THE PETITION

Section 71.11(l) does not expressly provide for any response to a petition. The Board has determined that a response from Region 5 would assist the Board in resolving American Bottom Conservancy's petition. Accordingly, the Board orders that Region 5 file a response to the

² Prior to 2013, section 124.19 did not address intervention or expressly grant permittees the ability to file a response to a permit appeal as a matter of right. *See* 40 C.F.R. § 124.19 (2012). Board cases under section 124.19 decided before the 2013 amendments to that section, however, routinely granted permittees' motions for intervention and allowed permittees to file a response. *See In re D.C. Water & Sewer Auth.*, NPDES Appeal No. 07-12, at 2-3 (EAB June 15, 2007) (Order Granting Motion for Leave to Intervene as Party Respondent); *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 470 (EAB 2002); *see also In re USGen New England, Inc.*, NPDES Appeal No. 03-12, at 7-8 n.13 (EAB Feb. 19, 2004) (Order Granting Review) (collecting cases).

³ The Board treats Veolia's motion to intervene as the equivalent of a notice of appearance.

petition within 30 days from the issuance of this order – in other words, on or before August 26, 2019. Any response by Veolia is also due on or before that date. Both Region 5 and Veolia must include all documents cited in their responses as attachments to the responses.

The Board has selected a 30-day timeframe for the filing of a response because section 71.11(l) gives a person or entity a 30-day period in which to file any petition, and, in analogous appeals, the time for filing a response is 30 days, *see* 40 C.F.R. § 124.19(b)(2)-(3). Veolia’s motion provides no grounds as to why a longer period is needed to respond to American Bottom Conservancy’s petition. The Board’s setting of a due date for responses to the petition is without prejudice to a motion by Region 5, Veolia, or both demonstrating that there is good cause as to why a longer time period is needed, and the Board would promptly consider and rule on a motion explaining why additional time is needed. If Region 5 or Veolia choose to file such a motion, they should attempt to ascertain whether the other parties concur or object to that motion and indicate in the motion the attempt made and the response obtained.⁴

In addition to filing a response, Region 5 must file a certified index of the entire administrative record for the Veolia permit decision no later than the date upon which it files its response. However, Region 5 is encouraged to file the index to the record, preferably electronically, as soon as possible after receiving this Order. Early filing of the certified index enables the Board to begin prompt review of the record even before all briefs are filed and facilitates Veolia’s ability to cite to the administrative record in its response.

⁴ This procedure should be followed as to any motion filed in this proceeding.

III. REPLIES TO RESPONSES

To further assist the Board's resolution of this matter, the American Bottom Conservancy may file a reply to any responses filed in opposition to its petition. Such replies must be filed on or before September 10, 2019. This due date grants the American Bottom Conservancy 15 days to file its reply or replies consistent with the time period for replies in section 124.19(c)(2). The specification of a deadline for any reply is without prejudice to American Bottom Conservancy seeking additional time based on good cause or Region 5 or Veolia opposing for good cause the filing of replies in this matter.

IV. PROCEDURES FOR FILING

Filing of responses, replies, or motions may be accomplished electronically pursuant to the Board's Order of January 28, 2010.⁵ Alternatively, filing may be accomplished by filing a

⁵ The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. *See* Revised Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Aug. 12, 2013), *available at* <http://www.epa.gov/eab> (Click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. *See id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically

paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy of any filing must be sent to all other parties, and a certificate of service showing the date and method of service should be included with the filing.

All documents filed in this matter must reference the appeal number and the name, address, and telephone number of the filer. If available, the filer also should provide a fax number and an email address. In addition, any envelope or other packaging containing documents sent to the Board's mailing address or hand-delivery address, as prescribed below, must bear a complete and accurate return address in the upper left-hand corner. The envelope or packaging must also clearly state the case name and appeal number in the lower left hand, corner.⁶

Documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the Board's U.S. Postal Service mailing address, which is:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board, 1103M
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0001

filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

⁶ All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website (www.epa.gov/eab) at the "Clerk of the Board" or "Frequently Asked Questions" links.

Documents that are sent to the Board's hand-delivery address (see below) through the U.S. Postal Service (except by Express Mail) will be returned to the sender and will not be considered as filed.

Documents that are hand-carried, delivered via Courier, mailed by Express Mail or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
East Building, Room 3332
Washington, D.C. 20004-0001

The contact number for hand delivery is (202) 233-0122. Such documents may be delivered from 8:30 a.m. to 4:30 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 26, 2019

By: _____



Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING INTERVENTION, ESTABLISHING BRIEFING SCHEDULE, AND SPECIFYING FILING PROCEDURES** in the matter of Veolia ES Technical Solutions, LLC, CAA Appeal No. 19-01, were sent to the following persons in the manner indicated:

By U.S. First Class Mail:

Elizabeth Hubertz
Interdisciplinary Environmental Clinic
Washington University School of Law
One Brookings Dr.
St. Louis, MO 63130
ejhubertz@wustl.edu

Joseph M. Kellmeyer
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
jkellmeyer@thompsoncoburn.com

By Pouch Mail:

Catherine Garypie
Office of Regional Counsel
US EPA, REGION 5
77 West Jackson Boulevard
Mail Code: C-14J
Chicago, IL 60604-3507
garypie.catherine@epa.gov

John T. Krallman
Office of General Counsel
US EPA
Mail Code: 2344A
1200 Pennsylvania Ave. NW
Washington, DC 20460
krallman.john@epa.gov

Dated: July 26, 2019



Eurika Durr
Clerk of the Board