

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

In the matter of:)	
)	
)	
VEOLIA ES TECHNICAL)	Appeal No. CAA 19-01
SOLUTIONS, LLC)	
)	
Permit No. V-IL-1716300103-2014-10)	
Docket No. EPA-R05-OAR-2014-0280)	

MOTION TO INTERVENE AND REQUEST FOR BRIEFING SCHEDULE

Permittee Veolia ES Technical Solutions, L.L.C. (“Veolia”), by and through its undersigned counsel, respectfully requests that the Environmental Appeals Board (“EAB”) grant Veolia’s Motion to Intervene and Request for Briefing Schedule. In support of its motion, Veolia states the following:

1. On June 17, 2019, Region 5 issued a final Clean Air Act Title V Permit decision and Response to Comments on EPA’s Draft Revised Air Pollution Control Title V Permit to Operate, No. V-IL-1716300103-2014-10. The Title V permit issued to Veolia (“Permit”) authorizes Veolia to operate air emission units in accordance with the terms of the Permit, which include requirements to conduct feedstream analysis and install and operate mercury emissions controls on two hazardous waste incinerators.

2. Issuance of the Permit follows more than two years of negotiations between EPA and Veolia stemming from EPA’s issuance of a Title V permit to Veolia on January 18, 2017 (“January 2017 Permit”). On February 15, 2017, Veolia filed a petition with the EAB contesting the terms of the January 2017 Permit. That petition culminated in a settlement agreement between EPA and Veolia that was subject to public comment beginning on November 15, 2017. See CAA § 113(g) Settlement Agreement, EAB Appeal No. 17-02 (“2018 Settlement

Agreement”); 82 FR 52901 (Nov. 15, 2017). The 2018 Settlement Agreement was finalized on March 28, 2018.

3. Upon finalization of the 2018 Settlement Agreement, EPA and Veolia filed an Unopposed Motion for Voluntary Remand and Joint Motion to Dismiss, which the EAB granted on April 3, 2018. Public comment on a draft permit incorporating the conditions of the 2018 Settlement Agreement ran from July 13, 2018 to November 5, 2018, and the Permit was formally issued on June 17, 2019.

4. On July 17, 2019, Petitioner American Bottom Conservancy (“ABC”) filed a Petition for Review with the EAB challenging the terms of the Permit.

5. Veolia now seeks to intervene to participate in any and all proceedings related to ABC’s permit challenge.

6. Upon timely motion, the EAB typically allows “permittees not already a party to the proceedings to participate as intervenors.” EAB Practice Manual, 48 n.50 (Aug. 2013) (citing *In re D.C. Water & Sewer Auth.*, NPDES Appeal 07-12, at 2-3 (EAB June 15, 2007) (granting intervenor status to permittee)); *see also In re Phelps Dodge Corp.*, 10 E.A.D. 460, 470 (EAB 2002) (granting permittee’s motion to intervene and file response to petition). Granting Veolia’s motion is also consistent with EAB’s “broad discretion to manage its permit appeal docket by ruling on motions presented to it for various purposes,” including in the context of petitions for review of Title V permits. *See In Re Peabody W. Coal Co.*, 14 E.A.D. 712, 716 (EAB 2010).

7. As the permittee, Veolia will be substantially impacted by the outcome of this proceeding. Veolia will ultimately bear the costs of compliance with the requirements of the Permit and any liabilities associated with relief potentially granted as a result of a permit challenge. Therefore, Veolia must be allowed to intervene to protect its interests.

8. In addition to its interests in the requirements of the Permit, Veolia is also highly knowledgeable concerning all aspects and subject matters raised by ABC's appeal, including the technical nature of the relevant regulations and Veolia's equipment and operations. As a result, if granted intervention, Veolia should be allowed to meaningfully participate in the substantive briefing on the question of whether the EAB should accept and consider ABC's appeal. Further, as set forth above, the Permit was subject to over two years of negotiations between Veolia and EPA, which resulted in a comprehensive settlement agreement that was approved after public notice and comment. In light of these issues, and in order to ensure that all of the technical and legal issues implicated by ABC's appeal can be fully addressed, the EAB should enter an order establishing a briefing schedule on whether the EAB should accept ABC's appeal for consideration.

WHEREFORE, Permittee Veolia ES Technical Solutions, L.L.C. respectfully requests that the EAB grant Veolia's motion and enter an order setting a schedule for substantive briefing regarding the acceptance of ABC's petition for appeal that allows a minimum of 45 days for initial responses to the petition.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the Rules of the Environmental Appeals Board of the U.S. Environmental Protection Agency, that on July 22, 2019, the foregoing was filed electronically with the Clerk of the Environmental Appeals Board using the EAB eFiling System, as authorized in the August 12, 2013, Standing Order titled Revised Order Authorizing Electronic Filing Procedures Before The Environmental Appeals Board Not Governed By 40 C.F.R. Part 22. The foregoing is also being served via U.S. Mail in hard copy on the following:

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