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In re: Bacardi Corporation, NPDES Appeal No. 11-07

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Dear Ms. Durr:

Enclosed for filing is Bacardi Corporation's Motion to Dismiss With Prejudice.

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May 21, 2012

Via Facsimile ((202) 233-0121) and Mail

Ms. Erika Durr
Clerk of the Board
Environmental Appeals Board (1103B)
U.S. Environmental Protection Agency
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ENVIR. APPEALS BOARD

In re: Bacardi Corporation, NPDES Appeal No. 11-07

Dear Ms. Durr:

Enclosed for filing is Bacardi Corporation's Motion to Dismiss With Prejudice.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

John Fehrenbach

John Fehrenbach
Counsel for Bacardi Corporation

DC:707452.1

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

In re:

Bacardi Corporation

NPDES Permit No. PR0000591

NPDES Appeal No. 11-07

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BACARDI CORPORATION'S MOTION TO DISMISS WITH PREJUDICE

I. INTRODUCTION

Bacardi Corporation ("Bacardi") requests that the Environmental Appeals Board ("Board") dismiss with prejudice Bacardi's Permit Appeal, NPDES Appeal 11-07. This Motion is based on a settlement reached by Bacardi and the U.S. Environmental Protection Agency – Region 2 ("EPA"), (collectively, the "Parties") as a result of the negotiations pursuant to the Board's Alternative Dispute Resolution ("ADR") pilot program, as summarized below.

II. PROCEDURAL BACKGROUND

On September 27, 2011, EPA issued to Bacardi a National Pollutant Discharge Elimination System ("NPDES") Permit No. PR000059 (the "Permit"). On November 17, 2011, Bacardi filed a Petition for Review of several conditions in the Permit pursuant to 40 C.F.R. § 124.19.

On December 7, 2011, the Parties notified the Board that the Parties agreed to participate in the Board's Alternative Dispute Resolution ("ADR") pilot program. By order dated December 20, 2011 ("Order Staying Proceedings to Allow Parties to Participate in ADR Pilot Program"), the Board stayed all proceedings in this matter until February 29, 2012. On February

27, 2012, the Parties jointly moved for a two-week extension of the stay, i.e., until March 14, 2012. The stays provided the Parties with the opportunity to reach a settlement.

On March 14, 2012, the Parties reported to the Board that they had reached a settlement that resolves the issues raised in Bacardi's Petition. In response, the Board extended the stay until Monday, May 14, 2012, stating that it expected Bacardi to file a motion to dismiss the petition with prejudice by that date, and that, if further extension of the stay was needed, the parties were required to file a joint report explaining the status of their progress and providing justification for a further extension of the stay.

The Parties filed a Joint Motion for Limited Extension of Stay on May 14, 2012, including a report on the status of the settlement and a justification for a further short (one week) extension of the stay until Monday, May 21, 2012. As stated in that report, the permit appeal has been settled in principle. As provided in that settlement in principle, in April 2012 EPA issued a draft agreed-to Clean Water Act discharge permit modification, and on April 9, 2012 EPA published a notice of the opportunity to submit public comments on that modification. The public comment period ended on May 9, 2012. On May 10, 2012, EPA notified Bacardi that it had received no public comment.

On May 14, 2012, EPA counsel notified counsel for Bacardi that EPA expected that the Bacardi permit modification would be signed and issued within one week. Upon such issuance, Bacardi stated that it would seek the withdrawal of its Petition for Review with prejudice.

III. JUSTIFICATION FOR DISMISSAL

On May 18, 2012, EPA counsel notified counsel for Bacardi that EPA had signed and issued the Bacardi permit modification. On May 21, 2012, EPA emailed to Bacardi a copy of the signed Bacardi permit modification. Accordingly, Bacardi moves for the dismissal of its Petition for Review with prejudice.

IV. REQUESTED RELIEF

For the above-discussed reasons, Bacardi moves for the dismissal of its Petition for Review with prejudice.

Respectfully submitted,

John Fehrenbach

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Date: May 21, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent on the below listed date to the following persons in the manner indicated:

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