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

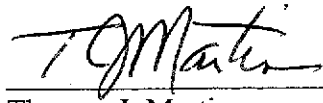
2008 MAR -3 AM 10:31  
ENVIR. APPEALS BOARD

In the Matter of:	)	
	)	
Robert J. Heser,	)	Appeal No. CWA 07-(03)
Centralia, Illinois	)	
	)	
and	)	
	)	
Andrew Heser	)	NOTICE OF DECISION
Centralia, Illinois,	)	NOT TO APPEAL
	)	
Docket No. CWA 05-2006-0002	)	
	)	
Respondents.	)	
_____	)	

Although technically not required by 40 C.F.R. § 22.30 or the Environmental Appeal Board's (EAB's or the "Board's") Order dated January 16, 2008, Region 5 of the U.S. Environmental Protection Agency ("Region 5" or Complainant") provides the following Notice of its Decision Not to Appeal the Order of Dismissal issued on December 19, 2007, by the Presiding Officer *In the Matter of Robert and Andrew Heser*, Docket No. CWA 05-2006-0002. In that Order, the Presiding Officer ruled that EPA's CWA Section 309(g) action to address a Clean Water Act Section 404 violation was time-barred under the 5-year Statute of Limitation ("SOL") provision at 28 U.S.C. Section 2462. In so ruling, the Presiding Officer found that the continuing violation and discovery rule exceptions to 28 U.S.C. Section 2462 did not apply. Region 5 has analyzed the Presiding Officer's opinion and weighed the many considerations that bear on a decision to appeal this ruling. In so doing, it deliberated extensively with the other Regions across the United States, as well as U.S. EPA

Headquarters, and has decided, despite disagreement with several portions of the Presiding Officer's ruling (e.g., continuing violations) and the Region's strong belief in the substantial justification of its arguments regarding the application of the SOL in this case<sup>1</sup>, to not pursue appeal in this matter. Accordingly, U.S. EPA provides this notice to the Board and other interested parties.

RESPECTFULLY SUBMITTED this 29th day of February, 2008.



Thomas J. Martin  
Associate Regional Counsel  
Region 5

Of Counsel:

Gary Jones  
EPA Office of Enforcement and  
Compliance Assurance

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<sup>1</sup> Subsequent to the Presiding Officer's Order of Dismissal issued in the *Heser* matter, Respondents filed an application for attorney's fees under the Equal Access to Justice Act (EAJA) as implemented at 40 C.F.R. Part 17. Complainant U.S. EPA moved to stay that proceeding pursuant to 40 C.F.R. § 17.14 and the dates set forth in footnote 2 of the Board's Order Granting Motion for Extension of Time, dated January 16, 2008. The Presiding Officer has not yet ruled on this motion.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Notice of Decision Not to Appeal *In the Matter of Robert J. Hesel and Andrew J. Hesel*, Docket No. CWA-05-2006-0002, were sent to the following persons in the manner indicated:

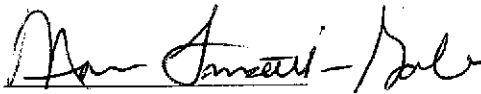
Fed Ex: Environmental Appeals Board  
Colorado Building  
1341 G Street, NW  
Suite 600  
Washington, D.C. 2005

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First Class Mail: Honorable William B. Moran  
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U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
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Dated: February 29, 2008

  
Marion Tunstill-Gale  
Administrative Program Assistant