

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

In the Matter of:	)	
	)	
VEOLIA ES TECHNICAL	)	
SOLUTIONS, L.L.C.	)	
	)	Appeal No.: CAA 17-02
Permittee	)	
	)	
Air Pollution Control Title V	)	
Permit to Operate	)	
Permit No. V-IL-1716300103-2014-10	)	
Docket No. U.S.EPA-R05-OAR-2014-0280	)	
	)	

**MOTION TO STAY**

Permittee Veolia ES Technical Solutions, L.L.C. (“Veolia”), by and through its undersigned attorneys, respectfully moves the Environmental Appeals Board (“EAB”), for an order staying the entirety of the Title V permit issued by Region 5 to Veolia, pending the EAB’s resolution of this matter. In support of its motion to stay, Veolia states the following:

1. On January 18, 2017, Region 5 issued its Final Permit Decision and Response to Comments on EPA’s Proposed Air Pollution Control Title V Permit to Operate, No. V-IL-1716300103-2014-10 for Veolia. On February 15, 2017, pursuant to 40 C.F.R. § 71.11(l), Veolia filed its Petition for Review with the EAB.

2. The Supreme Court has confirmed that “it is always within the discretion ... of an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.” *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970). This means that the EAB “has broad discretionary authority ... to manage its part 71 docket by granting ... motions” that are

presented during a petition for review. *See In re Peabody W. Coal Co., CAA Appeal No. 10-01*, 2010 WL 3258142, at \*5, 14 E.A.D. 712 (EAB Aug. 13, 2010); *see also* 40 C.F.R. § 124.19(f) (allowing motion practice in proceedings during petition for review of permit decision); EAB Practice Manual at p. 51 (Aug. 2013) (noting that EAB has regularly considered motions in permit proceedings).

3. The specific terms and conditions of the permit which are the subject of Veolia's Petition for Review are automatically stayed. *See* 40 C.F.R. § 71.11(i)(2)(ii) ("A final permit decision shall become effective 30 days after the service of the notice of the decision, unless: ... [r]eview is requested under paragraph (1) of this section (in which case the specific terms and conditions of the permit which are the subject of the request for review shall be stayed)"). As outlined in its Petition for Review, Veolia has sought review of multiple terms and conditions of the permit, which are automatically stayed.

4. Among the reasons set forth in its Petition for Review, Veolia has asserted for review defects in the notice and comment process, which present a challenge to the permit as a whole. Indeed, because of these defects, the public may have been prevented from participating in the fundamental process that underlies the administrative law system. These defects pervade the permit as a whole. This means that the automatic stay applies to the entire permit.

5. However, even if the automatic stay were deemed inapplicable to the permit in its entirety, the ends of justice require the EAB to issue an order staying the permit. First, as noted above, Region 5's failure to follow notice and comment procedures effectively removed the public from the underlying process. Second, the permit at issue is complex. As Veolia's Petition for Review highlights, it imposes onerous requirements on Veolia that are highly technical in nature. For Veolia, this means that compliance with the permit will require significant time and

resources. Likewise, for Region 5, the technical nature of this permit will require that significant resources be devoted to enforcement and otherwise ensuring compliance. A stay of the permit pending a decision by the EAB would, therefore, prevent all parties involved from incurring unnecessary costs or otherwise expending unnecessary resources related to the permit terms and conditions, which are subject to change following the EAB's decision.

6. Following Region 5's review of this Motion, while Region 5 does not take position on any grounds Veolia has asserted to support this Motion, Region 5 has no objection to the EAB granting the relief requested in this Motion.

WHEREFORE, Permittee Veolia ES Technical Solutions, L.L.C. respectfully requests the EAB grant Veolia's Motion to Stay and enter an order staying the entirety of the Title V permit issued by Region 5, pending the EAB's resolution of this matter.

Respectfully Submitted,

/s/ Joseph M. Kellmeyer

Joseph M. Kellmeyer

Ryan R. Kemper

Sara L. Chamberlain

Benjamin S. Harner

Thompson Coburn LLP

One US Bank Plaza

St. Louis, Missouri 63101

314-552-6000

FAX 314-552-7000

jkellmeyer@thompsoncoburn.com

rkemper@thompsoncoburn.com

schamberlain@thompsoncoburn.com

bharner@thompsoncoburn.com

*Attorneys for Permittee Veolia ES Technical  
Solutions, L.L.C.*

## CERTIFICATE OF SERVICE

I hereby certify, pursuant to the Rules of the Environmental Appeals Board of the U.S. Environmental Protection Agency, that on February 17, 2017, 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 paper form on the following:

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

Edward Nam  
Director, Air and Radiation Division  
USEPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Julie Armitage  
Bureau Chief, Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794

/s/ Joseph M. Kellmeyer  
Joseph M. Kellmeyer