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ENVIR. APPEALS BOARD

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

In re: Easley Combined Utilities


NPDES Permit No. SC0039853

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) **NPDES Appeal No. 06-10**
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 4
NOTIFICATION OF INTENT TO WITHDRAW PORTIONS OF NPDES
PERMIT**

Pursuant to 40 CFR §124.19, EPA is exercising its authority to withdraw the challenged permit terms in NPDES Permit No. SC0039853 and to prepare a draft permit modification addressing the portions so withdrawn, as discussed in the attached Memorandum.¹

12/21/06
Date


James D. Giattina, Director
Water Management Division

¹ The Authority to issue and condition permits has been delegated from the Regional Administrator to the Water Division Director. See Regional Delegations: 2-5 issued 3/15/1985 and 2-20, updated June 2003.

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NPDES Appeal No. 06-10

**MEMORANDUM IN SUPPORT OF NOTIFICATION OF INTENT TO
WITHDRAW PORTIONS OF NPDES PERMIT**

Region 4 of the U.S. Environmental Protection Agency ("EPA") respectfully submits to the Environmental Appeals Board (EAB) the attached notification of its intent to withdraw the challenged portions of NPDES Permit No. SC0039853 and to propose a draft permit modification addressing portions so withdrawn, pursuant to 40 CFR Part 124.19(d). EPA moves the Board to deny the petition without prejudice or in the alternative, to stay the proceedings, pending the issuance of a final permit modification by EPA.

I. BACKGROUND

This matter involves NPDES Permit No. SC0039853 issued to Easley Combined Utilities Authority (Easley), Middle Branch Wastewater Treatment Plant (WWTP), on July 28, 2006, by the United States Environmental Protection Agency (EPA). On August 25, 2006, Easley filed a petition for review challenging the following effluent limits:

1. Effluent flow limitations of 3.5 million gallons per day (mgd) monthly average and 3.75 mgd weekly average. Permit Part I.A.1.
2. Effluent total suspended solids concentration and mass limitations. Permit Part I.A.1.

3. Effluent fecal coliform daily maximum limitation, Permit Parts I.A.1 and 6.
4. In-stream macroinvertebrate assessment. Permit Part III.C.

II. BASIS FOR WITHDRAWAL OF PERMIT

Under 40 CFR §124.19(d),

The Regional Administrator,¹ at any time prior to the rendering of a decision to grant or deny review of a permit decision under paragraph (c) of this section, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit under §124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit which are not withdrawn and which are not stayed under §124.16(a) continue to apply.

As the EAB has not yet issued a decision on whether to grant Easley's petition for review, EPA is exercising its authority under this provision to withdraw the challenged permit terms and to prepare a draft permit modification addressing the portion so withdrawn. As discussed in EPA's November 9, 2006 Motion for a Stay, EPA plans to propose modifications to the permit to remove the effluent flow limits. Based on the concerns raised in Easley's petition, EPA also plans to propose effluent limits and conditions for the other three challenged permit terms in the new draft permit modification. As required under 40 CFR 124.19, EPA will take public comment on all proposed effluent limits and conditions in the draft permit modification.

III. REQUESTED RELIEF

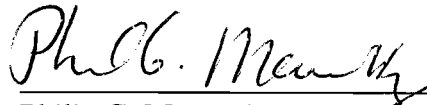
Accordingly, EPA requests that the EAB dismiss the petition without prejudice, with leave to refile a petition, if necessary, based on the final permit modification by EPA. In the alternative, EPA requests that the matter be stayed until the permit

¹ The Authority to issue and condition permits has been delegated from the Regional Administrator to the Water Division Director. See Regional Delegations: 2-5 issued 3/15/1985 and 2-20, updated June 2003.

modification process is complete. The process for modification will require several steps. As a matter of practice, EPA will send a preliminary draft to the applicant and the state for review. At the end of that 30 day review, EPA will then respond to comments, and depending on the number of comments, issue a draft permit modification and public notice within two (2) weeks, and request state certification at that time. The comment period will remain open for 30 days and the state will have 60 days to submit a section 401 certification. If there are comments, EPA will prepare a response, and incorporate necessary changes and any requirements from the state certification prior to issuing the final permit at the end of this process. Given the notice requirements, the entire process can take up to four months.

Respectfully submitted this 21ST day of December, 2006.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, Region 4**


Philip G. Mancusi-Ungaro
South Carolina Bar No. 12002

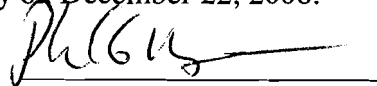
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cc: Paul Calamita, Esq,
Dick Sedgley, Esq.
Aqualaw, Inc.

Pooja Parikh USEPA, OGC
Virgina Buff – USEPA R-4

CERTIFICATE OF SERVICE

I certify that on I have served copies of the attached UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 4 NOTIFICATION OF INTENT TO WITHDRAW PORTIONS OF NPDES PERMIT And MEMORANDUM IN SUPPORT OF NOTIFICATION OF INTENT TO WITHDRAW PORTIONS OF NPDES PERMIT on F. Paul Calamita and Richard Sedgley, Aqualaw PLC, at 801 East Main Street, Richmond Virginia, by United States Mail, and Electronic Copies sent e:mail for delivery on December 22, 2006.

A handwritten signature in dark ink, appearing to read "Philip Mancusi-Ungaro", written over a horizontal line.

Philip Mancusi-Ungaro