

**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)	
)	

**JOINT STATUS REPORT, UNOPPOSED MOTION FOR VOLUNTARY REMAND,
AND JOINT MOTION TO DISMISS WITHOUT PREJUDICE IF VOLUNTARY
REMAND IS GRANTED**

Petitioner Veolia ES Technical Solutions, L.L.C. (“Petitioner”) and Region 5 of the United States Environmental Protection Agency (“Region 5”) (collectively, the “Parties”), by and through their undersigned attorneys, respectfully provide the Environmental Appeals Board (“Board”), with this Joint Status Report, Unopposed Motion for Voluntary Remand, and Joint Motion to Dismiss Without Prejudice if Voluntary Remand is Granted.

I. Status Report

On March 23, 2018, the Board issued an Order requiring the Parties to “file a status report by March 29, 2018, informing the Board of the progress EPA has made and of any further proceedings that may be necessary, beyond May 29th, to address this Petition.” Order at 2-3. Pursuant to this Order, the Parties report that EPA’s General Counsel has reached a final decision not to withhold or withdraw consent from the contingent settlement agreement between the Parties. As such, the Parties believe further proceedings are not necessary at this time and, as set

forth below, Region 5 moves the Board for a voluntary remand of the title V permit issued on January 18, 2017 (“Permit”), which is unopposed and supported by Veolia, and, if remand is granted, the Parties jointly move for a voluntary dismissal of the petition filed on February 15, 2017 (“Petition”).

II. Unopposed Motion for Voluntary Remand

The Board has the inherent discretionary authority to grant voluntary motions for remand in permit appeal proceedings under 40 C.F.R. Part 71. *In re Peabody Western Coal Company*, 14 E.A.D. 712, 2010 WL 3258142, *5 (Aug. 13, 2010). “The Board will typically grant a motion for voluntary remand in a case where the permit issuer ‘shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint.’” *Id.* After reviewing a summary of comments received from the public, the General Counsel has reached a final decision not to withhold or withdraw consent from the contingent settlement agreement filed with the Board on October 23, 2017. Therefore, Region 5 now wishes to accept remand of the Permit for the purposes of carrying out the provisions of the settlement agreement agreed to by the Parties. Petitioner does not oppose Region 5’s motion for remand and supports a remand for the purposes of carrying out the terms of the settlement agreement. Further, a remand is in the best interests of administrative efficiency as it will allow for the resolution of this appeal pursuant to the settlement agreement.

III. Joint Motion to Dismiss Without Prejudice if Voluntary Remand is Granted

If the Board grants the Unopposed Motion for Voluntary Remand as set forth above, the Parties jointly move the Board for a voluntary dismissal of this action without prejudice. Upon remand, the Parties may complete their obligations under the terms of the settlement agreement. The settlement agreement was negotiated and agreed to in good faith and, as a result, the Parties

believe that additional consideration of this appeal by the Board is not necessary at this time. Therefore, the Parties now jointly move the Board to dismiss the Petition without prejudice.

WHEREFORE, based on the facts and law set forth above, the Parties move the Board to (1) grant the unopposed motion for remand, and (2) if the unopposed motion for remand is granted, grant the Parties' joint motion to dismiss without prejudice.

<p>Respectfully Submitted,</p> <p><u>/s/ Catherine Garypie</u> Catherine Garypie Office of Regional Counsel, Region 5 U.S. Environmental Protection Agency 77 W. Jackson Blvd. (C-14J) Chicago, IL 60604 312-886-5825 Garypie.catherine@epa.gov</p> <p><u>/s/ John T. Krallman</u> John T. Krallman Office of General Counsel U.S. Environmental Protection Agency WJC North, MC 2344A 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460 202-564-0904 Krallman.john@epa.gov</p> <p><i>Attorneys for the U.S. Environmental Protection Agency</i></p>	<p>Respectfully Submitted,</p> <p><u>/s/ Joseph M. Kellmeyer</u> 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</p> <p><i>Attorneys for Permittee Veolia ES Technical Solutions, L.L.C.</i></p>
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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 **March 28, 2018**, 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:

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/s/ John T. Krallman
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