

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

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ENVIR. APPEALS BOARD

In re: Easley Combined Utilities

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) NPDES Appeal No. 06-10
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NPDES Permit No. SC0039853

STATUS REPORT AND MOTION FOR CONTINUATION OF STAY

On January 12, 2007, in response to the Environmental Protection Agency's (EPA's) Notification of Intent to Withdraw Portions of NPDES Permit (Notification), the Environmental Appeals Board (EAB) issued an Order Staying Proceedings and Establishing Status Report Schedule (Order). Under that Order, the third Status Report is due on May 15, 2007.

The Board ordered that EPA specifically report on whether it expects that the appeal will be "withdrawn, settled, or otherwise resolved on the basis of developments arising during the permit modification process." Out of the four permit limits that were challenged in the original petition, EPA expects that two will be resolved as a result of the permit modification process. As requested by the Petitioner, EPA does not expect to include in the final petition limits for Total Suspended Solids (TSS) or a macroinvertebrate study requirement. EPA is unsure as to whether the Petitioner's challenge to the flow limits will be resolved. As noted in the Notification, based on procedural errors with the state's prior section 401 certification, EPA did not include flow limits in the draft permit. At this time, EPA does not plan to include flow limits in the

final permit, unless the state provides for such limits in its section 401 certification for the permit modification. As discussed below, EPA is still awaiting state Section 401 certification. Finally, EPA has continued its discussions with Petitioner related to the Fecal Coliform limit and whether that issue may be settled or continue to be challenged will partially depend on the state section 401 certification. However, based on its reanalysis of data and legal basis, EPA believes that such limits are appropriate water quality based effluent limits under the CWA and its implementing regulations. EPA has detailed the basis for its fecal coliform limits in its record for the proposed permit. If the Petitioner wishes to challenge such limits based on the new permit record, EPA requests that the Board order the Petitioner to file a new petition for review, as the current petition before the Board challenges the fecal coliform limit based on the prior permit record, which has changed significantly as a result of the permit modification process.

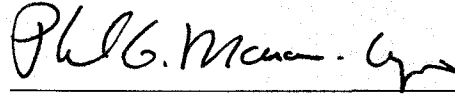
As proposed in the Notification, EPA expected to issue the final permit by May 15, 2007, and has taken all necessary actions within its control to meet this expected schedule. Specifically, EPA sent the informal draft to the Petitioner requesting comments, received those comments from the Petitioner and modified the draft permit to address some of the issues Petitioner raised, issued the formal draft permit for public comment, and has reviewed and considered such comments. EPA received comments from the Petitioner, and based on their comments and discussions with counsel for the Petitioner, it appears that the Petitioner may challenge a new limit related to copper that was included in the draft permit, when and if the final permit includes that limit. EPA plans to continue its discussions with the Petitioner on this limit. As indicated in the Order, if the Petitioner chooses to challenge this limit, the Petitioner may need to file a motion for consolidation.

EPA also requested state section 401 certification at the same time it issued the draft permit. However, on April 25, 2007, EPA received a request from the state for an extension of the section 401 certification until June 15, 2007. The state has indicated that the request for an extension is due largely to the ongoing state litigation on the legality of flow limits. For reasons of comity, EPA wishes to grant that request pursuant to 40 CFR § 124.53(c)(3). EPA understands that the state must issue a public notice for the certification and accept comments for 30 days. EPA also understands that the state plans to issue that notice this week, possibly as early as May 15, 2007 so they can close the comment period before the June 15, 2007 deadline. Once the draft certification is noticed, EPA will better understand the issue(s) the state will raise and time frame for when the certification will be made final. At the end of the 30 day notice period, if the certification is challenged it is not effective pending the outcome of that challenge. At that point, EPA will assess whether to issue the final permit with a reopener provision to address the result of the final effective state certification.

Originally EPA had anticipated issuing the final permit by May 15, 2007, as proposed in the Notification, but due to the state's request for an extension for providing section 401 certification and the discussions that are related to the certification, EPA no longer expects to meet that schedule. Accordingly, EPA is seeking a continuation of the stay until June 30, 2007, during which time EPA would grant the state's request for the section 401 certification extension, and fully assess the status of the outstanding issues including the outcome of the state section 401 certification process.

Respectfully submitted this 14th day of May, 2007.

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



Philip G. Mancusi-Ungaro
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
404-562-9519

cc: F. Paul Calamita Esq.
Richard H. Sedgley, Esq.
Aqualaw
Pooja Parikh
Office of General Counsel
Virginia Buff
R-4, Water Management Division

From: Origin ID: QFEA (404)562-9519
Philip Mancusi-Ungaro
EPA Region 4
Suite 9725
61 Forsyth St
Atlanta, GA 30303



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