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CH2MHILL
Plateau Remediation Company

Fax

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2011-2012 SEALS BOARD

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

In the Matter of:

**CH2M HILL PLATEAU
REMEDATION COMPANY, LLC
HANFORD NUCLEAR
RESERVATION**

Appeal No. NPDES 09-08

NPDES Permit No. WA-002591-7

PETITIONER RESPONSE TO ORDER TO SHOW CAUSE

Petitioner CH2M Hill Plateau Remediation Company (CHPRC) hereby responds to the Environmental Appeals Board (the Board) Order Granting Stay and Requiring Parties to Show Cause (the Order), dated September 2, 2009. In the Order, the Board noted the stated intent of EPA Region 10 (the Region) to resolve the CHPRC Petition for Review (the Petition) by issuing a notice of withdrawal of Part I.B.2 of NPDES Permit No. WA-002591-7, the provision contested in the Petition. That provision states:

Discharges of process water such as dust suppression water and stormwater from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Cleanup actions are prohibited from Outfall 004.

The Board asked CHPRC and the Region to file a brief or briefs showing cause why the Petition should not be dismissed once the notice of withdrawal is issued. The Region has

RESPONSE TO ORDER TO SHOW CAUSE--1
Appeal No. NPDES 09-08

CHPRC
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informed CHPRC that, in response to the Order, it will issue the notice of withdrawal and move to dismiss the Petition.

DISCUSSION

CHPRC fully supports the Region's notice of withdrawal of the contested provision. Because the notice of withdrawal will undergo public comment, the Region's ultimate action will not be determined until the end of the public comment period. There are three basic alternative outcomes:

First, if, after considering public comment, the Region deletes Part I.B.2 from the permit, the goal of CHPRC's Petition will have been accomplished.

Second, if, after considering public comment, the Region decides to retain Part I.B.2 in whole or in part in some modified form, CHPRC will need to continue its appeal. In that case, if the Petition has not been dismissed, and the current Stay of Proceedings has been continued, there would be no need for CHPRC to file a new Petition. CHPRC and the Region could then proceed through the permit appeal process.

CHPRC notes that the Board has recently declined to dismiss a Petition for Review in another permit appeal arising in EPA Region 1 in *Town of Wayland Wastewater Management District Commission*, NPDES Appeal Nos. 08-26 and 08-27. Instead, the Board will continue to stay proceedings pending EPA's final action after taking public comment on its proposed modification of that permit. Such an outcome would be acceptable to CHPRC.

Third, if the Region does not fully delete Part I.B.2, and the Board has dismissed the original Petition, CHPRC will be forced to defend its interests by filing a new Petition for Review concerning Part I.B.2 or whatever language replaces it. CHPRC has been informed by the Region that "EPA assumes that CHPRC may file a new appeal under 40 C.F.R. § 124.19 if

the modification process produces a permit condition that CHPRC finds objectionable. Dismissing this petition would therefore not leave CHPRC without an appeal opportunity in case of an unanticipated result following public comment. *See In re: San Jacinto River Authority*, NPDES Appeal No. 07-19, 2008 WL 869683 (EAB 2008)." (EPA Region 10 Motion to Dismiss).

CHPRC agrees with the Region that CHPRC retains the legal right to maintain or renew its appeal should the provision at issue not be fully and finally deleted from the permit. It is upon this common understanding between CHPRC and EPA Region 10 that CHPRC does not oppose the dismissal of the Petition, once the Region has issued the notice of withdrawal of Part I.B.2. CHPRC does not waive any of its rights under the law or regulations, but affirmatively retains the right to renew its appeal should the Region's deletion of Part I.B.2 not be full and complete upon the completion of public comment.

Furthermore, should the Board proceed to dismiss the Petition after the Region issues the notice of withdrawal, CHPRC requests that the Board affirm in its order that such dismissal is without prejudice to CHPRC's right to appeal should the final Region 10 action retain some form of the objectionable language in the permit.

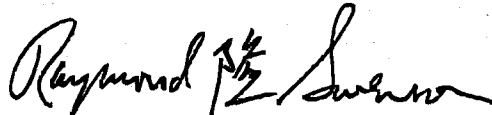
RELIEF REQUESTED

CHPRC requests that the Board either (a) continue to stay the proceedings in its appeal until the Region's deletion of the objectionable language is final and complete, or (b) if the Board chooses to dismiss the Petition, the Board affirm that CHPRC retains its full rights to appeal in the event the Region does not fully and completely delete the objectionable language from the permit.

Dated this 29th day of September, 2009.

Respectfully submitted,

Attorney for Petitioner CHPRC



RAYMOND TAKASHI SWENSON

Senior Counsel

CH2M Hill Plateau Remediation Company

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CERTIFICATE OF SERVICE

I CERTIFY THAT THE FOREGOING "Response to Order to Show Cause" was sent to the following persons, in the manner specified, on the date below:

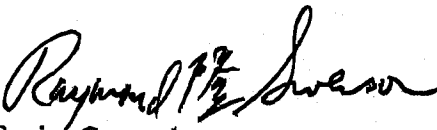
Original by electronic submission and Federal Express , to:

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One copy, by facsimile and first class U.S. mail, to:

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Dated:

September 29, 2009 
Senior Counsel
CHPRC