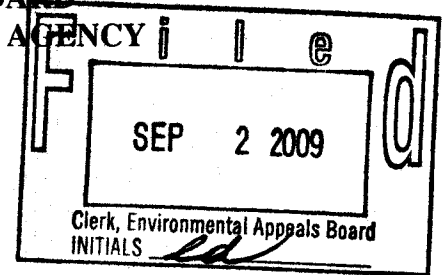


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**



In re:

CH2M Hill Plateau Remediation  
Company, LLC, Hanford  
Nuclear Reservation

NPDES Permit No. WA-002591-7

NPDES Appeal No. 09-08

**ORDER GRANTING STAY AND REQUIRING PARTIES TO SHOW CAUSE**

On June 23, 2009, U.S. Environmental Protection Agency Region 10 (the "Region") issued to CH2M Hill Plateau Remediation Company, LLC ("CH2M") a National Pollution Discharge Elimination System ("NPDES") permit, number WA-002591-7 (the "Permit"). On July 23, 2009, CH2M filed a petition requesting that the Environmental Appeals Board grant review of one condition of the Permit found at Part I.B.2. Consistent with the Board's practice, the Clerk of the Board issued a letter dated July 30, 2009, notifying the Region that CH2M had filed a petition for review and setting September 15, 2009, as the due date for the Region's response and for the Region to file certain other documents. On August 31, 2009, the Region and CH2M jointly filed a motion requesting a stay of this matter.

The parties state in their motion that, on August 20, 2009, the Region issued notice that the Permit condition challenged in this appeal, Part 1.B.2, is stayed and is severable from the remainder of the Permit and, therefore, pursuant to 40 C.F.R. §§ 124.16(a)(2) and 124.20(d), the uncontested Permit conditions will become fully effective and enforceable on September 22,

2009. The parties also state that the Region intends to withdraw, pursuant to 40 C.F.R.

§ 124.19(d), the contested Permit condition, Part I.B.2, soon after the other Permit conditions go into effect on September 22, 2009. Section 124.19(d) authorizes the permit issuer to “withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn” and to take public comment on the draft permit. 40 C.F.R. § 124.19(d).

The parties explain that the draft permit the Region intends to propose will remove contested condition Part I.B.2 from the Permit and that “[f]ollowing public notice and comment, the Region will finalize the permit modification unless public comment raises significant issues that lead the Region to reconsider the modification.” Motion at 2. The parties request that the Board stay this matter until November 30, 2009, to allow the Region time to completed the process of withdrawing Permit Part I.B.2, issuing a draft permit, taking public comment, and issuing its permit decision on that draft permit. *Id.* The parties state that they will file a status report on November 30, 2009, stating whether the stay should continued, whether CH2M’s petition should be dismissed, or whether the Board should set a new due date for the Region’s response to the petition.

Upon consideration, the parties’ request for stay of this matter is hereby granted, but only through and including Thursday, October 1, 2009. Accordingly, the Region’s response to CH2M’s petition and the other documents required by the Clerk’s August 20, 2009 letter shall be due on or before Friday, October 2, 2009. In the event that, on or before October 2, 2009, the Region files notice of its withdrawal, pursuant to 40 C.F.R. § 124.19(d), of Permit Part I.B.2, the due date for the Region’s response to the petition shall be stayed until the Board issues a further order. At the time the Region files notice of withdrawal of Permit Part I.B.2, the Region and

CH2M, either individually or jointly, shall file a brief showing cause why CH2M's petition should not be dismissed as moot (alternatively, the Region may file a motion requesting dismissal of this appeal or CH2M may file a notice of withdrawal of its petition). *See In re Cavenham Forest Industries*, 5 E.A.D. 722, 728 & n.10 (EAB 1995) ("[I]n addressing a claim of mootness, the Board looks to whether there remain any contested permit conditions - that is, conditions identified as objectionable in the petition for review - that the Regional Office has not undertaken to revise in the manner requested by the petitioner. If no such challenged conditions remain, a petition under section 124.19 must be dismissed as moot, even if the parties continue to disagree over the meaning of the applicable legal principles."); *see also In re City of Port St. Joe*, 5 E.A.D. 6, 9 (EAB 1994).<sup>1</sup>

So ordered.

Dated: *Sept. 2, 2009*

ENVIRONMENTAL APPEALS BOARD

By: *Charles J. Sheehan*  
Charles J. Sheehan,  
Environmental Appeals Judge

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<sup>1</sup> The Board has also issued a similar show cause order in the matter of *Town of Wayland Wastewater Management*, NPDES Appeal Nos. 08-26 & 27, (EAB Aug. 31, 2009), where that permitting authority, U.S. EPA Region 1, has already withdrawn all contested permit conditions and has requested a stay of the *Wayland* case. Responses to the Board's show cause order in the *Wayland* case are due on or before September 15, 2009. The Region in the present case is encouraged to consult with Region 1 in order to present consistent legal arguments on the Agency's behalf.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Stay and Requiring Parties to Show Cause, in the matter of CH2M Hill Plateau Remediation Company, LLC, Hanford Nuclear Reservation, NPDES Appeal No. 09-08, were sent to the following persons in the manner indicated:

Telecopier and Pouch Mail:

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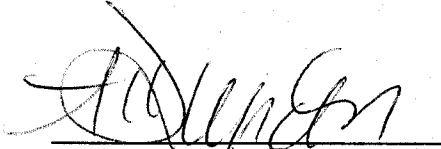
Telecopier and Interoffice Mail:

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Dated: 9-2-09

  
Annette Duncan  
Secretary