

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

In re:)	
)	
American Samoa Power Authority)	
Utulei Sewage Treatment Plant)	NPDES Appeal No. 19-07
)	
NPDES Permit No. AS000200001)	

ORDER DISMISSING PETITION FOR REVIEW

The American Samoa Power Authority petitioned for review of the National Pollutant Discharge Elimination System permit issued by U.S. EPA, Region 9, for the Power Authority's operation of the Utulei Sewage Treatment Plant, which discharges wastewater into Pago Pago Harbor, American Samoa. Prior to filing a response to the petition, Region 9 notified the Environmental Appeals Board and the Power Authority by letter that it was withdrawing the permit conditions challenged by the Power Authority.

Specifically, Region 9 stated that it was withdrawing the following contested provisions in the permit: (a) the effluent limitations in Part I, B. Effluent Limits and Monitoring Requirements Outfall Number 001, Table 1, for (1) Ammonia, total (as N), (2) Ammonia Impact Ratio, (3) Nitrogen, total (as N), (4) Phosphorous, Total, (5) Chronic Toxicity (WET) S. purpuratus, Method 1008.0 WB33L, and (6) Chronic Toxicity (WET) D. excentricus, Method 1008.0 WB33N; and (b) Attachment E (pH-Dependent Ammonia (as N) Objectives with

Dilution), which informs the ammonia effluent limits for the above parameters. U.S. EPA Region 9 Letter to the Clerk of the Environmental Appeals Board and William E. Spitzenberg 2 (Jan. 16, 2020).

Region 9 explained that it “will modify the withdrawn provisions, as appropriate, and conduct public notice and comment consistent with 40 C.F.R. § 124.6 and 124.19(j).” *Id.* Simultaneous with notifying the Board that it was withdrawing the contested permit conditions, the Region, by motion, requested that the Board dismiss the Power Authority’s petition as moot. The Region states that it has contacted the Power Authority and that the Power Authority has no objection to the Region’s motion to dismiss.

Section 124.19(j) allows a permit issuer to unilaterally withdraw a permit at any time prior to thirty days after filing the response to a petition and re-issue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and reissuance. In this instance, the Region withdrew the permit prior to filing its response and notified the Board and the Power Authority that it had done so and would prepare a new draft permit in accordance with 40 C.F.R. § 124.6. Thus, the Region’s withdrawal of the permit comports with the requirements set forth in 40 C.F.R. § 124.19(j).


Pursuant to 40 C.F.R. § 124.19(j), the petition for review is hereby dismissed. When the Region reissues the Power Authority’s permit, that reissued permit is subject to the requirements of part 124, including the permit appeal procedures of section 124.19. Subject to the requirements of section 124.19, the Power Authority may file a petition for review with the

Board of the reissued permit under that section, and the Power Authority must do so if it wishes to preserve the option of seeking judicial review of the Region's new permit decision.

So ordered.¹

Dated: January 22, 2020

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the *Order Dismissing Petition For Review* in the matter of American Samoa Power Company, NPDES Appeal No. 19-07, were sent to the following persons by email:

William E. Spitzenberg
American Samoan Power Authority
PO Box PBB
Pago Pago, American Samoa 96799
WilliamS@aspower.com

Kimberly Wells
U.S. Environmental Protection Agency, Region 9
Mail Code: ORC-2-3
75 Hawthorne St.
San Francisco, CA 94105
Wells.Kimberly@epa.gov

Courtesy Copy:
Steven Neugeboren
Office of General Counsel
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2355A
Washington, DC 20460
Neugeboren.Steven@epa.gov

Dated: January 22, 2020



Eurika Durr
Clerk of the Board