

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

In re:)
)
)
Lincoln Pulp & Paper Co.) NPDES Appeal No. 00-8
)
)
)
Permit No. ME002003)
_____)

ORDER DISMISSING PETITION FOR REVIEW

On August 9, 2000, the Penobscot Indian Nation ("Nation") submitted its "Appeal of the National Pollutant Discharge Elimination System Permit for Discharge from the Lincoln Pulp & Paper Company in Lincoln, Maine" ("Petition"). In the Petition, the Nation challenges the NPDES permit issued to Lincoln Pulp & Paper Co. ("Lincoln") by U.S. EPA Region I ("Region") on the grounds that the Region violated its duty to protect the Nation's sustenance rights in issuing the permit, that the permit violates Maine's water quality standards, and that the permit's dioxin calculations were erroneous. The Nation specifically contests the permit's dioxin and furan limits, but contests none of the other permit conditions.

On September 20, 2000, the Board received a copy of a September 15, 2000 letter sent from the Region to the Nation indicating its determination that the subject permit would be withdrawn and reissued in order to address EPA's subsequently issued "Cluster Rule" for paper pulp mills and to decide

appropriate limits necessary to protect water quality. The letter further stated that the new NPDES permit would be reissued by either the Region or by the Maine Department of Environmental Protection depending on whether Maine received approval for its NPDES implementation program and after the determination of jurisdictional issues regarding Lincoln's outfall.

As cited by the Region, 40 C.F.R. § 124.19(d) (as amended in 65 Fed. Reg. 30,911 (May 15, 2000)) grants the Regional Administrator the right to withdraw a contested permit and draft a new permit any time prior to the rendering of a decision by the Board. In the preamble to the proposed modification of section 124.19(d), EPA noted that it had long been the practice for EPA to withdraw and reissue permits prior to Board decisions and that the new regulation "proposes to clarify that the Regional Administrator may withdraw and reissue any NPDES * * * permit * * * prior to a decision of the EAB to grant or deny review under § 124.19(c)." 61 Fed. Reg. 65,281 (Dec. 11, 1996). It is clear, therefore, that the Region's withdrawal of the subject permit is within its absolute authority.

On September 26, 2000, the Board filed an Order to Show Cause in which it directed the Nation to show cause - in light of the Region's withdrawal of the permit - as to why its appeal should not be dismissed. On October 13, 2000, the Board received the Nation's Response to Order to Show Cause in which it agreed

that the withdrawal of the permit by the Region rendered moot the Nation's appeal and that the appeal should be dismissed.

Accordingly, the Nation's Petition has become moot by reason of the Region's withdrawal of the permit, and its appeal is hereby DISMISSED.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____/s/_____
Ronald L. McCallum
Environmental Appeals Judge

Dated: 10/25/00

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the matter of Lincoln Pulp & Paper Co., NPDES Appeal No. 00-8, were sent to the following persons in the manner indicated:

By U.S. Mail:

Patti Goldman
Attorney for Penobscot Indian Nation
Earthjustice Legal Defense Fund
705 Second Avenue, Suite 203
Seattle, WA 98104-1711

Kate L. Geoffroy
Pierce Atwood
One Monument Square
Portland, ME 04101-1110

Timothy L. Williamson
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region I
1 Congress St.
Boston, MA 02114-2023

Date: 10/26/00

_____/s/_____
Annette Duncan
Secretary