

F I L E D

Sep 30 2019

Clerk, Environmental Appeals Board

INITIALS

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

In re:)

City of Nezperce, Idaho)

NPDES Appeal No. 19-02

NPDES Permit No. ID0020397)

**ORDER GRANTING UNOPPOSED MOTION FOR VOLUNTARY REMAND AND
DISMISSING PETITION FOR REVIEW**

On July 25, 2019, the City of Nezperce, Idaho (“City”) filed a petition before the Environmental Appeals Board (“Board”) seeking review of a National Pollution Discharge Elimination System (“NPDES”) permit, governing discharges from the City’s wastewater treatment plant, issued by U.S. EPA Region 10 (“Region”). In its petition, the City objected to a permit provision including effluent limitations for total ammonia. *See* Petition for Review at 5-14. In particular, the City argued that the Region erred by failing to include a compliance schedule for the permit’s ammonia limitation or to respond to the City’s comments regarding a compliance schedule. *Id.* On August 20, 2019, the Board, at the request of the Region and the Office of General Counsel, issued an order extending the deadline for the Region to file a response to the petition until September 30, 2019. *See* Order Granting Unopposed Motion for Extension of Time to File Response.

On September 27, 2019, the Region filed a motion requesting that the Board remand the Permit back to the Region “without prejudice to allow the Region to reconsider whether to include a compliance schedule for the new ammonia limits in the permit.” EPA Region 10’s

Motion for Voluntary Remand (“Motion”) at 3; *see* 40 C.F.R § 124.19(j) (allowing the Region to withdraw a permit “at any time prior to 30 days after [the Region] files its response to the petition for review”). The Region represents that the City does not oppose the Motion. Motion at 3.

The Board has broad discretion to grant a remand request, and we have held that “[a] voluntary remand is generally available where the permitting authority has decided to make a substantive change to one or more permit conditions, or otherwise wishes to reconsider some element of the permit decision before reissuing the permit.” *In re Desert Rock Energy Co.*, 14 E.A.D. 484, 493 (EAB 2009) (quoting *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, at 6 (EAB May 20, 2004) (Order Denying Respondent’s Motion for Voluntary Partial Remand and Staying the Board’s Decision on the Petition for Review)). As the Board has emphasized, it “typically grants a motion [for remand] where the movant shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint.” *Id.* at 497; *accord In re Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-04 through 14-62, at 2 (EAB June 10, 2014) (Order Granting Motion for Voluntary Remand to Allow Reconsideration of Permit Decision).


Here, the Region has shown good cause for its request. The Region has clearly expressed its intent to reconsider its final permit decision related to the ammonia limitation. *See* Motion at 2-3. In addition, administrative efficiency will be served by allowing the Region to reconsider its decision and correct any errors. Moreover, the City does not oppose the motion. For these reasons, the Board concludes that remand for reconsideration of the permit decision is appropriate in this case. The Board therefore GRANTS the Region’s Motion for Voluntary Remand and hereby DISMISSES NPDES Appeal No. 19-02.

After reconsideration on remand, under the part 124 permitting regulations the Region will issue a new final permit decision. *See* 40 C.F.R. §§ 124.15(a), .17(a). The City may file a petition under 40 C.F.R. § 124.19(a) with the Board challenging the new final permit decision, and it must do so if it wishes to preserve the option of seeking judicial review of EPA's final action.¹

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: September 30, 2019

By: 
Kathie A. Stein
Environmental Appeals Judge

¹ In any petition for review filed after the issuance of a new permit decision, the City will be able both to reassert issues already raised in its current petition and to assert objections based on any changes made to the permit decision on remand. Petitioners other than the City, however, will be able to petition the Board for review of the new permit determination only to the extent of any changes made on remand. *See* 40 C.F.R. § 124.19(a).

² The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Unopposed Motion for Voluntary Remand and Dismissing Petition for Review** in the matter of *City of Nezperce, Idaho*, NPDES Appeal No. 19-02, were sent to the following persons in the manner indicated:

By U.S. First Class Mail, Return Receipt Requested:

Fredric P. Andes
Erika K. Powers
Barnes & Thornburg LLP
I North Wacker Drive, Suite 4400
Chicago, IL 60606
fandes@btlaw.com

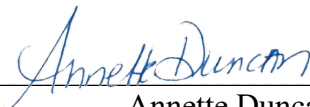
By Pouch Mail:

Courtney Weber
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Street, Ste. 155
Mail Code: 11-C07
Seattle, WA 98101
Email: weber.courtney@epa.gov

By Inter-Office Mail:

James Curtin
Office of General Counsel
US EPA
Mail Code: 2355A
1200 Pennsylvania Ave. NW
Washington, DC 20460
Curtin.James@epa.gov

Dated: September 30, 2019



Annette Duncan
Administrative Specialist