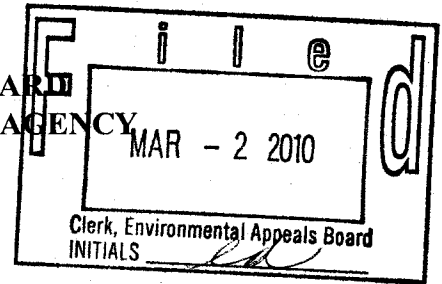


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)
City of Marlborough Westerly Wastewater)
Treatment Facility)
)
NPDES Permit No. MA0100480)
)
_____)

NPDES Appeal Nos. 10-01,
10-02 & 10-03

ORDER DISMISSING PETITIONS FOR REVIEW

On November 16, 2009, U.S. Environmental Protection Agency Region 1 (“Region”) issued a National Pollutant Discharge Elimination System (“NPDES”) final permit modification for NPDES Permit No. MA0100480 to the City of Marlborough for its Westerly Wastewater Treatment Facility (“Facility”). The Board received three petitions seeking review of the permit modification: one from the Town of Stow, Massachusetts, a town located downstream from the Facility; one from the permittee, the City of Marlborough; and one from the Organization for the Assabet River. All three petitions were timely filed.

On February 22, 2010, the Region issued a notice withdrawing the November 16, 2009, final permit modification pursuant to its authority under 40 C.F.R. § 124.19(d).¹ See U.S. EPA Region 1, Notice of Withdrawal of NPDES Permit No. MA0100480 Modification (Feb. 22, 2010) (“Withdrawal Notification Letter”). The following day, the Region filed a motion with the

¹ Section 124.19(d) allows a permit issuer to unilaterally withdraw a permit decision (or portion thereof) prior to the Board rendering a decision to grant or deny review. *In re Desert Rock Energy Co.*, PSD Appeal Nos. 09-03 through 09-06, slip op. at 11 (EAB Sept. 24, 2009), 14 E.A.D. at ___ (Remand Order); *In re San Jacinto River Auth.*, NPDES Appeal No. 07-19, at 3 (EAB Mar. 28, 2008) (Order Dismissing Petition for Review).

Board requesting all three petitions for review be dismissed as moot. Respondent Region's Motion to Dismiss as Moot the Petitions for Review of the Permit Modification ("Motion to Dismiss"). In both its notification letter and its motion, the Region states that it is withdrawing the permit modification in its entirety and intends to prepare a new draft permit, which will be subject to notice and comment in accordance with the applicable regulations. Motion to Dismiss at 3; Withdrawal Notification Letter at 2. The Region argues that "[w]ith the withdrawal of the entire permit modification – the sole object of the substantive and procedural arguments made in the petitions – there are no longer any conditions of the final permit decision to contest or to review under § 124.19." Motion to Dismiss at 3.

Upon consideration, the Board concludes that the Region's withdrawal of the permit modification in its entirety renders the three petitions challenging that modification moot. The petitions are therefore **DISMISSED WITH PREJUDICE**. This dismissal is not a determination on the merits of any arguments raised in the petitions. Thus, it does not preclude Petitioners from raising those arguments in their public comments submitted to the Region regarding the forthcoming draft permit modification nor does it preclude Petitioners from seeking Board review on any future EPA action with respect to the above-captioned permit in accordance with 40 C.F.R. § 124.19.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

3/2/10

By:



Edward E. Reich

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petitions for Review in the matter of City of Marlborough Westerly Wastewater Treatment Facility, NPDES Appeal Nos. 10-01, 10-02, and 10-03, were sent to the following persons in the manner indicated:

EPA Pouch Mail

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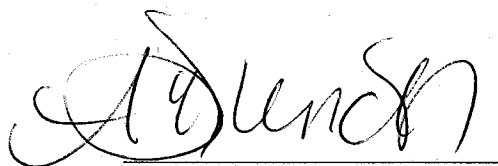
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Dated: **MAR - 2 2010**



Annette Duncan
Secretary