

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

In re:)
Keolis Commuter Services, LLC,) NPDES Appeal No. 18-03
NPDES Permit No. MA0028941)

ORDER DISMISSING PETITION FOR REVIEW AS MOOT

Keolis Commuter Services, LLC ("Keolis") petitioned the Environmental Appeals Board ("Board") on July 18, 2018, to review a National Pollution Discharge Elimination System Permit issued by Region 1 of the U.S. Environmental Protection Agency. Petition for Review of NPDES Permit No. MA0028941 (July 18, 2018) ("Petition for Review"). The Permit authorized Keolis, the Massachusetts Bay Transportation Authority, and the Delaware North Corporation, as co-permittees, to discharge from an outfall at the North Station Railroad Terminal to the Charles River. *Id.* at 1. The Board stayed this proceeding until November 13, 2018, in response to a joint motion to stay these proceedings. Order Granting Joint Motion for Stay of Proceedings at 1 (Aug. 15, 2018). The Region has now filed with the Board a Motion to Dismiss as Moot the above-captioned Petition for Review pursuant to 40 C.F.R. § 124.19(j). Assented-To Motion to Dismiss the Petition for Review as Moot at 2 (Oct. 19, 2018) ("Motion to Dismiss").

As grounds for the requested dismissal, the Region notes that, under 40 C.F.R. § 124.19(j), at any time prior to thirty days after the Region files its response to a petition and upon notification to the Board, the Regional Administrator may withdraw portions or all of a contested permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the withdrawn portions of the permit. Motion to Dismiss at 1-2. The Region has not yet filed a

Response in this matter and on October 15, 2018, the Region filed a notice with the Board that the Region is withdrawing Section I.B.9 of the Permit (the only contested permit condition, Petition for Review at 1) and commencing a new draft permit proceeding under 40 C.F.R. § 124.6. Notice of Partial Withdrawal Pursuant to 40 C.F.R. § 124.19(j) at 2-3 (Oct. 15, 2018) ("Notice of Partial Withdrawal"); *see also* Motion to Dismiss at 2. Consequently, the Region contends that the issue presented in the Petition for Review is now moot and the Petition should be dismissed. Motion to Dismiss at 2. The Region also states that "dismissal of this issue would have no effect on Keolis's right to submit comments on the draft permit modification or to seek Board review of any final modification of [the permit], in accordance with 40 C.F.R. § 124.19." *Id.* Finally, the Region represents that Keolis assents to the Motion to Dismiss. *Id.*

Having considered the Motion to Dismiss and the representations therein as well as the Notice of Partial Withdrawal, the Region's Motion to Dismiss is GRANTED and the Petition for Review is DISMISSED as moot.

So ordered.

Dated:	October 24, 2018	By:	Aaron P. Avila	e
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ENVIRONMENTAL APPEALS BOARD¹

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing **Order Dismissing Petition for Review as Moot** in the matter of *Keolis Commuter Services*, *LLC*, NPDES Appeal No. 18-03, were sent to the following persons in the manner indicated:

By E-mail:

Eric L. Klein, Esq. Beveridge & Diamond, P.C. 15 Walnut Street, Suite 400 Wellesley, MA 02481 (781) 416-5700 eklein@bdlaw.com

Joshua Secunda
Assistant Regional Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail code: ORC 04-6
Boston, MA 02109-3912
(617) 918-1736
Secunda.josh@epa.gov

Dated: October 24, 2018 Euclidean Entre Dated:

Eurika Durr Clerk of the Board