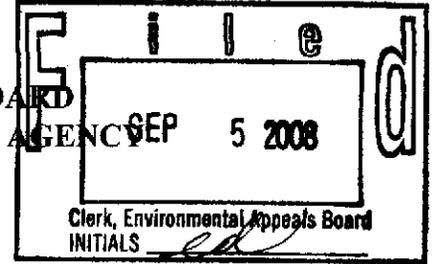


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Essroc San Juan, Inc.)
) NPDES Appeal No. 07-20
NPDES Permit No. PR0001163)
_____)

REMAND ORDER

On November 20, 2007, U.S. Environmental Protection Agency, Region 2 (the "Region") issued a National Pollutant Discharge Elimination System ("NPDES") permit, No. PR0001163 ("Permit") to Essroc San Juan, Inc. ("Essroc"). On December 14, 2007, Essroc filed a petition requesting that the Environmental Appeals Board (the "Board") grant review of seven conditions of the permit. On December 19, 2007, the Clerk of the Board issued a letter to the Region requesting that the Region respond to Essroc's petition for review on or before February 7, 2008. At the parties' request, the Board has issued a total of five orders staying proceedings in this matter to allow the parties to focus their attention on settlement negotiations.

By joint motion filed on September 2, 2008,¹ the Region and Essroc state that they have now reached an agreement and executed a Consent Order in this matter and request that the Board "dispose of Essroc's Permit Appeal." Joint Motion for Disposition of Permit Appeal

¹ Documents are "filed" with the Board on the date they are *received*.

(Sept. 2, 2008) ("Joint Motion"). The Consent Order is attached to the Joint Motion. The Joint Motion summarizes the provisions of the Consent Order as follows:

1. The seven conditions contested by Essroc in its Petition will be stayed for a period of one year from the date of execution of the Consent Order; therefore, with regards to the seven contested conditions, Essroc will comply with the conditions of the previously effective 2001 Permit during the effective period of the Consent Order;
2. All other conditions of the 2007 Permit are not stayed and remain fully enforceable obligations; and,
3. Essroc agrees to file a motion with the EAB requesting the withdrawal of Essroc's permit appeal, which is being complied with through the filing of the instant motion.

Joint Motion at 2. During the one-year period in which the disputed permit terms are stayed,

"Essroc will pursue resolution of its pending Reconsideration and Appeal of Water Quality Certificate ('WQC') issued by Puerto Rico's Environmental Quality Board ('EQB')." *Id.*

Should the EQB decide to revise the WQC, the Consent Order states that the Essroc may request, and the Region will consider, a permit modification pursuant to 40 C.F.R. §§ 122.62 and 124.5.

In light of this Consent Order, the Joint Motion requests that the Board either: (1) dismiss the petition for review subject to Essroc's ability to re-activate it in the event the EQB does not act on Essroc's pending "Reconsideration and Appeal" within the one-year stay and the Region reinstates the contested permit conditions, or (2) stay the proceedings in this matter concurrent with the one-year stay in the Consent Order. Joint Motion at 3.

Upon consideration, the Board has decided to remand this matter to the Region for further proceedings. This remand is without prejudice to Essroc's right to request reinstatement of the

appeal by written request to the Board. Such a request, however, will only be considered in the event that the EQB has not acted on Essroc's reconsideration request within the one-year stay of the seven contested permit conditions, and the Region decides to reinstate the contested permit conditions.

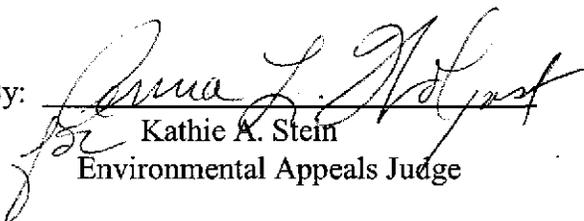
So ordered.

Dated:

September 5, 2008

ENVIRONMENTAL APPEALS BOARD

By:


for Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Remand Order in the matter of Essroc San Juan, Inc., NPDES Appeal No. 07-20, were sent to the following persons in the manner indicated:

By Certified Mail
Return Receipt Requested:

Eduardo Negron Navas
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Dated: SEP 5 2008



Annette Duncan
Secretary