



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

In re:
Wulf Cattle Depot
NPDES Permit No. SD-0034606
NPDES Appeal No. 21-01

ORDER GRANTING UNOPPOSED MOTION TO DISMISS

This matter involves the appeal of a Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit issued by U.S. Environmental Protection Agency Region 8 ("Region") to Petitioner Wulf Cattle Depot ("Wulf Cattle") for a Concentrated Animal Feeding Operation facility located in the town of McLaughlin, South Dakota, within the exterior boundary of the Standing Rock Sioux Reservation. Wulf Cattle filed its notice of appeal with the Environmental Appeals Board ("Board") on February 19, 2021, and the Board granted Wulf Cattle an extension of time within which to file its appellate brief. See Wulf Cattle Depot Notice of Appeal (Feb. 19, 2021); Order Granting Extension of Time for Filing Brief in Support of Petition for Review (EAB Feb. 23, 2021). Since that time, the Board has granted each of the Region's requests to stay this matter while the parties and the Standing Rock Sioux Tribe have been involved in discussions and dispute resolution proceedings in an effort to resolve various issues concerning the permit.

On September 27, 2021, the Region notified the Board that it is withdrawing the entire permit at issue in this appeal. EPA Region 8 Sixth Status Report and Unopposed Motion to

Dismiss (Sept. 27, 2021). The Region explains that, “in the interest of administrative and judicial efficiency, the Region has concluded that it would be most appropriate to engage a neutral third-party mediator * * * outside of the Board’s NPDES permit appeal process.” *Id.* at 5. The Region reports that it “will use the results of * * * mediation to help guide its development of a revised draft renewal permit” for Wulf Cattle’s facility. *Id.* at 6. And the Region represents that it will issue a revised draft permit, along with a statement of basis, and follow the standard public notice and comment process in 40 C.F.R. Part 124. *Id.* at 5-6.


Based on its withdrawal of the permit, the Region moves to dismiss Wulf Cattle’s appeal as moot. *Id.* at 1, 6. The Region states that Wulf Cattle “does not oppose the Region’s motion to dismiss, subject to reserving all rights with regard to Region’s planned permit reissuance.” *Id.* at 6-7.

Given the Region’s withdrawal of the entire permit at issue pursuant to 40 C.F.R. § 124.19(j), the Board **GRANTS** the Region’s unopposed motion and dismisses this appeal as moot. *See, e.g., In re Limetree Bay Terminals, L.L.C., CAA Appeal Nos. 20-02 & 20-03 (EAB Mar. 26, 2021) (Order Dismissing Petitions for Review as Moot).*

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: September 29, 2021

By: 

Aaron P. Avila
Environmental Appeals Judge

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **ORDER GRANTING UNOPPOSED MOTION TO DISMISS** in the matter of *Wulf Cattle Depot*, NPDES Appeal No. 21-01, were sent to the following persons by electronic mail:

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Dated: Sep 29, 2021

Emilio Cortes

Emilio Cortes
Clerk of the Board