

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

In the Matter of:)	
)	
Vickery Environmental, Inc.)	
Vickery, Ohio)	
)	Appeal No.: RCRA 19-01
Permittee)	
)	
Final RCRA Permit)	
Docket No. OHD 020 273 819)	
)	

**UNOPPOSED MOTION FOR VOLUNTARY REMAND AND JOINT MOTION TO DISMISS
WITHOUT PREJUDICE IF VOLUNTRY REMAND IS GRANTED**

The United States Environmental Protection Agency Region 5 (EPA) and Vickery Environmental, Inc. (“Vickery”) (“collectively, the Parties”) respectfully provide the Environmental Appeals Board (“EAB”) with this Unopposed Motion for Voluntary Remand and Joint Motion to Dismiss Without Prejudice if Voluntary Remand is Granted.

I. BACKGROUND

1. On September 12, 2014, Vickery applied for a hazardous waste management permit under the Resource Conservation and Recovery Act (RCRA). On October 5, 2018, EPA issued a draft RCRA permit to Vickery and provided an opportunity for 45 days of public comment. EPA responded to the public comments and issued the final RCRA permit on September 6, 2019.
2. The effective and expiration dates of the EPA’s RCRA permit are October 10, 2019 and October 10, 2029, respectively.
3. On October 7, 2019, prior to the effective date, Vickery timely petitioned the EAB to review the following permit conditions:
 - a. Permit Conditions III.C.8, III.C.8.a and III.C.8.b;
 - b. Permit Conditions III.C.9 and III.C.9.a through III.C.9.i;
 - c. Permit Condition III.C.10;
 - d. Permit Condition III.C.11;

- e. Permit Conditions III.D.3 and III.D.3.(a), III.D.3.(b), III.D.3.(c) and III.D.3.(e);
 - f. Permit Condition III.E.2; and
 - g. Permit Condition III.E.3.
4. On October 23, 2019, EPA issued to the EAB, the Permit Applicant, and interested parties a Notification concerning the Appeal of the Federal RCRA Permit for Vickery, Docket Number OHD 020 273 819. This letter notified the EAB, the Permit Applicant, and interested parties of the contested permit conditions, and that such permit conditions will be stayed and be subject to judicial review pending final agency action in accordance with 40 C.F.R. § 124.16.
 5. Pursuant to 40 C.F.R. § 124.19(b)(2), "the Regional Administrator must file a response to the Petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of the petition." Therefore, the Region's response brief and a certified index of the administrative record, and the relevant portions of the administrative record was due on November 6, 2019.
 6. On October 29, 2019, the Parties filed a joint motion for extension of time, to allow for discussions regarding technical questions concerning facility operation and unit configuration.
 7. On November 1, 2019, in response to the Parties' joint motion, the EAB granted EPA a 60-day extension to file a response brief, until January 7, 2020.
 8. Pursuant to the terms of the EAB's November 1, 2019, Order, EPA timely filed a certified index of the administrative record with the EAB, copying the Petitioner, on November 18, 2019.
 9. On December 23, 2019, the Parties filed a joint motion for extension of time, to allow for continuation of discussions regarding technical questions concerning facility operation and unit configuration.
 10. On December 27, 2019, in response to the Parties' joint motion, the EAB granted EPA a 60-day extension to file a response brief, until March 9, 2020.
 11. During the extended periods, EPA posed technical questions to Petitioner to clarify the issues related to the bases for EPA's permit terms and EPA also contacted another government agency (i.e., Occupational Safety and Health Administration (OSHA)) to seek additional information and

clarification of petitioned issues.

12. The Parties' discussions have been productive towards clarifying facility operations and in resolving matters subject to Vickery's Petition.
13. Issues raised in the Petition, as well as any potential resolutions to matters before the EAB, require full consideration by Regional management as well as consultation with EPA Headquarters. Region 5 represents that it has consulted with EPA's Office of General Counsel, Office of Enforcement and Compliance Assurance, and the Office of Land and Emergency Management regarding this Motion.

II. UNOPPOSED MOTION FOR VOLUNTARY REMAND

14. The Board has the inherent discretionary authority to grant voluntary motions for remand in permit appeal proceedings under 40 C.F.R. Part 71. *In re Peabody Western Coal Company*, 14 E.A.D. 712, 2010 WL 3258142, *5 (Aug. 13, 2010). "The Board will typically grant a motion for voluntary remand in a case where the permit issuer 'shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint.'" *Id.*
15. As a result of EPA's consideration of positions asserted in Petitioner's October 7, 2019, Petition, EPA has determined that revision of the petitioned provisions set forth in paragraph 3 consistent with Vickery's Petition is appropriate.
16. Therefore, EPA has determined that voluntary remand of the Permit for the purpose of revising it consistent with positions set forth in Vickery's Petition is the best course of action.
17. Petitioner does not oppose EPA's motion for voluntary remand.
18. Further, a remand is in the best interests of administrative efficiency as it will allow for the resolution of this appeal.

**III. JOINT MOTION TO DISMISS WITHOUT PREJUDICE IF VOLUNTARY
MOTION TO DISMISS IS GRANTED**

19. If the Board grants the Unopposed Motion for Voluntary Remand as set forth above, the Parties jointly move the Board for a voluntary dismissal of the action without prejudice. Upon remand, EPA will revise the permit consistent with paragraph 15, above and reissue to Vickery.

20. Wherefore, based on the facts and law set forth above, the Parties move the Board to (1) grant the unopposed motion for remand, and (2) if the unopposed motion for remand is granted, grant the Parties' joint motion to dismiss without prejudice.

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Respectfully Submitted,

/s/ Thomas J. Martin

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CERTIFICATE OF SERVICE

I hereby certify that the original of this **UNOPPOSED MOTION FOR VOLUNTARY REMAND AND JOINT MOTION TO DISMISS WITHOUT PREJUDICE IF VOLUNTRY REMAND IS GRANTED In the Matter of Vickery Environmental, Inc., Appeal No.: RCRA 19-01, Docket No. OHD 020 273 819** was filed electronically with the Board.

Further, I hereby certify that I caused a copy of this **UNOPPOSED MOTION FOR VOLUNTARY REMAND AND JOINT MOTION TO DISMISS WITHOUT PREJUDICE IF VOLUNTRY REMAND IS GRANTED In the Matter of Vickery Environmental, Inc., Appeal No.: RCRA 19-01, Docket No. OHD 020 273 819**, to be served by electronic mail upon the Petitioner, as listed below.

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Dated: [March 5, 2020]
/s/ Thomas Martin
Thomas Martin
Associate Regional Counsel

