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EPA REGION 10 BOARD



United States of America  
Environmental Protection Agency

**A FAX FROM: Region 10**

**TO:**

**Eurika Durr**

**FAX NO.:**

**(202) 233-0122**

**SUBJECT: Motion to Dismiss Petition for Review and Request for Extension**

**FROM:**

**Pete Ford**

**PHONE NO.:**

**(206) 553-2116**

**OFFICE:**

**ORC Region 10, Seattle**

**FAX NO. FOR:**

**COMMENTS:**

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APPEALS BOARD

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

In the Matter of:

CITY OF TWIN FALLS

Appeal Nos. NPDES 09-12, 09-13

NPDES Permit No. ID-002127-0

**MOTION TO DISMISS PETITION FOR REVIEW AND REQUEST FOR EXTENSION**

Region 10 of the United States Environmental Protection Agency (the Region) files this motion to dismiss as moot the petition for review filed by Idaho Conservation League (ICL) in the above-captioned matter because the Region has withdrawn the portions of the permit challenged by ICL. See attached "Notification of Withdrawal of Permit Conditions." In addition, the Region requests an extension to file its response to the petition for review filed by the City of Twin Falls (the City) until September 8, 2010. The City supports the request for extension. In the event that the Board denies the Region's request for extension until September 8, 2010, the Region requests a 10-day extension from date of the Board's denial to file its response to the City's petition.

MOTION TO DISMISS AND REQUEST  
FOR EXTENSION - 1  
Appeal Nos. NPDES 09-12, 09-13

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1037

### BACKGROUND

The Region issued NPDES Permit No. ID-002127-0 to the City on September 22, 2009. On October 26, 2009, the Board notified the Region that the City had filed a petition for review, dated October 21, 2009, and set a December 8, 2009 deadline for the Region's response. On October 28, 2009, the Board notified the Region that ICL had filed a petition for review, dated October 26, 2009, and set a December 14, 2009 deadline for the Region's response. By letter dated November 20, 2009, the Region identified the various conditions challenged by the City or ICL as stayed until final agency action under 40 C.F.R. § 124.19(f). The remaining permit conditions were uncontested and severable from the contested conditions and, in accordance with 40 C.F.R. §§ 124.16(a)(2) and 124.20(d), became fully effective and enforceable on November 1, 2009. On November 23, 2009, the Region filed a motion for extension and single response date to file its responses to the petitions from the City and ICL by January 11, 2009. The Board granted the Region's motion by letter dated December 1, 2009. The Region subsequently requested and the Board subsequently granted two additional extensions to respond to the petitions, and the Region's response is currently due March 8, 2010.

### DISCUSSION

In some cases, dismissal of a petition may be appropriate if and when all contested conditions have been withdrawn. See *In re Cavenham Forest Indus.*, 5 E.A.D. 722, 728 & n.10 (EAB 1995) (declining to reinstate appeal where each contested permit condition had been remanded; no contested conditions from original petition remained for Board to review); *In re City of Port St. Joe*, 5 E.A.D. 6, 9 (EAB 1994) (holding appeal was mooted by Region's withdrawal of permit under predecessor to 40 C.F.R. § 124.19(d) despite petitioner's objection to new draft permit proposed as replacement); *In re City of Haverhill Wastewater Treatment*

MOTION TO DISMISS AND REQUEST  
FOR EXTENSION - 2  
Appeal Nos. NPDES 09-12, 09-13

U. S. ENVIRONMENTAL PROTECTION AGENCY  
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Seattle, Washington 98101  
(206) 553-1037

Facility, NPDES Appeal No. 08-01, Order Dismissing Petition for Review at 2 (EAB, Feb. 28, 2008) (granting motion to dismiss petition as moot after Region withdrew sole contested condition).

Here, Section I.B.1 and Appendix A of the permit were the sole contested conditions in ICL's petition for review. As explained in the "Notification of Withdrawal of Permit Conditions" attached hereto as Exhibit 1, the Region has withdrawn Section I.B.1 and Appendix A from the permit, effective immediately. As a result, pursuant to 40 C.F.R. § 124.19(d), the Region believes that ICL's petition is moot, and the Region hereby moves to dismiss ICL's petition for review.

As explained in Exhibit 1, and pursuant to 40 C.F.R. § 124.19(d), the Region intends to issue a proposed permit modification *to not include* Section I.B.1 and Appendix A (i.e., total phosphorus trading) in the permit. The Region informed the City of its intention to withdraw Section I.B.1 and Appendix A from the permit and to subsequently issue a proposed permit modification *to not include* Section I.B.1 and Appendix A (i.e., total phosphorus trading) in the permit. In response, the City indicated its intention to submit comments during the permit modification public notice period and subsequently file a petition for review with the Board regarding the Region's decision not to include these provisions authorizing total phosphorus trading in the City's permit. As noted above, the City currently has a petition for review of the permit pending before the Board, to which the Region's response is due March 8, 2010. The Region believes that the Board may prefer to address and resolve all issues raised by the City in its current and prospective petitions in one consolidated petition for review. Thus the Region requests to extend its deadline to respond to the City's petition until September 8, 2010. Such extension would allow the Region to propose a permit modification *to not include* Section I.B.1

MOTION TO DISMISS AND REQUEST  
FOR EXTENSION - 3  
Appeal Nos. NPDES 09-12, 09-13

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1037

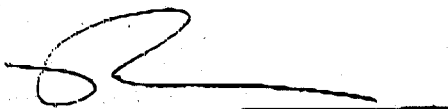
and Appendix A (i.e., total phosphorus trading) in the permit, the City to comment on that proposal, the Region to finalize that proposal, and the City to file a petition for review with the Board, which the Board could then consolidate with the City's pending petition. If the Board denies the Region's request, the Region requests a 10-day extension from the date of denial to file its response to the City's pending petition for review.

**RELIEF REQUESTED**

Based on the foregoing, the Region requests that the Board dismiss ICL's petition for review as moot. In addition, the Region requests that the Board grant the Region's request for extension to September 8, 2010 to respond to the City's petition. If the Board denies the Region's request for extension, the Region requests a 10-day extension from the date of the Board's denial to respond to the City's petition.

Dated this 2nd day of March, 2010.

Respectfully submitted,



PETER Z. FORD  
 Assistant Regional Counsel  
 U.S. Environmental Protection Agency  
 1200 Sixth Avenue  
 Seattle, Washington 98101  
 Tel: (206) 553-2116  
 Fax: (206) 553-0163

Of Counsel:

Jim Curtin  
 Attorney Advisor  
 Water Law Office  
 Office of General Counsel

MOTION TO DISMISS AND REQUEST  
 FOR EXTENSION - 4  
 Appeal Nos. NPDES 09-12, 09-13

U.S. ENVIRONMENTAL PROTECTION AGENCY  
 1200 Sixth Avenue  
 Seattle, Washington 98101  
 (206) 553-1037

(202) 564-5482

Exhibit 1: "Notification of Withdrawal of Permit Conditions"

MOTION TO DISMISS AND REQUEST  
FOR EXTENSION - 5  
Appeal Nos. NPDES 09-12, 09-13

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1037

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Motion to Dismiss Petition for Review and Request for Extension" and attached "Notification of Withdrawal of Permit Conditions" were sent to the following persons, in the manner specified, on the date below:

Original by fax and and first class U.S. mail, to:

Ms. Eureka Durr, Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
Colorado Building, Suite 600  
1341 G Street, NW  
Washington, D.C. 20005

One copy by fax and first class U.S. mail, to:

Fritz Wonderlich  
Wonderlich & Wakefield  
Attorney at Law  
P.O. Box 1812  
Twin Falls, Idaho 83303-1812  
Fax: (888) 789-0935  
Phone: (208) 352-0811

Justin Hayes  
Idaho Conservation League  
P.O. Box 844  
Boise, Idaho 83701  
Fax: (208) 344-0344  
Phone: (208) 345-6933, ext. 24

Dated: 3/2/10

  
U.S. Environmental Protection Agency  
Office of Regional Counsel

MOTION TO DISMISS AND REQUEST  
FOR EXTENSION - 6  
Appeal Nos. NPDES 09-12, 09-13

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1037



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

MAR - 2 2010

OFFICE OF  
WATER AND WATERSHEDS

**VIA Fax and First Class Mail**

Ms. Jackie Fields, City Engineer  
City of Twin Falls  
P.O. Box 1907  
Twin Falls, Idaho 83303-1907

Re: NPDES Appeal No.09-13  
NPDES Permit No. ID-002127-0  
Notification of Withdrawal of Permit Conditions

Dear Ms. Fields:

The above-referenced National Pollutant Discharge Elimination System (NPDES) permit was issued to City of Twin Falls Wastewater Treatment Plant (the City) on September 22, 2009. On October 28, 2009, the Environmental Appeals Board (EAB) notified Region 10 that Idaho Conservation League (ICL) had filed a petition for review of the permit. By letter dated November 20, 2009, the Region identified those permit conditions that were stayed as a result of ICL's petition. (The Region's November 20, 2009 letter also identified those permit conditions that were stayed as a result of a petition for review filed by the City.) With respect to ICL's petition, the following contested conditions were identified as stayed until final agency action under 40 C.F.R. § 124.19(f):

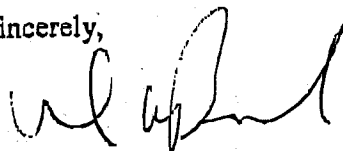
- Section I.B.1: "The permittee may engage in pollutant trading for average monthly discharges of total phosphorus pursuant to the requirements in 'State of Idaho Department of Environmental Quality Pollutant Trading Guidance' (November 2003 draft). No trading is allowed to adjust discharges to meet average weekly limits or for other pollutants. This permit only authorizes trading with other point sources in Segments 1, 2, and 3 in the Middle Snake River watershed that have NPDES permits that authorize trading. Trading with non-point sources is not authorized. See Appendix A for details about the requirements for buying and selling pollutant credits and reporting such trades to EPA and the Idaho Department of Environmental Quality (IDEQ)."
- Appendix A (Pollutant Trading in the Upper Snake Rock Subbasin)

Pursuant to 40 C.F.R. § 124.19(d), the Region hereby withdraws Section I.B.1 and Appendix A from NPDES Permit No. ID-002127-0. As of the date of this notification, neither Section I.B.1 nor Appendix A is in effect as a permit condition. The Region intends to issue a proposed permit modification *to not include* Section I.B.1 and Appendix A in the permit in the near future.



If you have any questions, please feel free to contact Peter Ford, Office of Regional Counsel, at (206) 553-2116, or John Drabek, Office of Water and Watersheds, at (206) 553-8257.

Sincerely,



Michael A. Bussell, Director  
Office of Water and Watersheds

cc: Ms. Erika Durr, Environmental Appeals Board  
Mr. Fritz Wonderlich, Wonderlich & Wakefield  
Mr. Justin Hayes, Idaho Conservation League  
Ms. Marti Bridges, Idaho Department of Environmental Quality