

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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In the Matter of:) Appeal No. NPDES 18-04
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CITY OF HARRISON) **EPA REGION 10'S**
WASTEWATER TREATMENT PLANT) **MOTION TO DISMISS**
)
NPDES Permit No. ID0021997)
_____)

The United States Environmental Protection Agency, Region 10 (“Region”) respectfully moves the Environmental Appeals Board (“EAB”) to dismiss as moot the Petition for Review filed by the Idaho Conservation League (“ICL”) contesting the issuance of National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID0021997 (“Permit”). As grounds for the motion, the Region states as follows:

1. On July 26, 2018, ICL filed with the EAB a Petition for Review (“Petition”) of the Permit issued to the City of Harrison (“Harrison”) for the discharge of effluent from Harrison’s wastewater treatment plant (“Facility”). This Petition was assigned Appeal No. NPDES 18-04.
2. The main issue on appeal concerns whether it was appropriate for the Region to authorize percent removal effluent limits for five-day biochemical oxygen demand (“BOD₅”) and total suspended solids (“TSS”) lower than secondary

treatment standards in accordance with 40 C.F.R. § 133.103(d). Dkt. #1 at 6-12. Although not presented directly as an issue preserved for review, ICL's petition also questions the Region's decision to re-authorize in the Permit effluent limitations for TSS that are equivalent to secondary treatment without conducting the analysis required by 40 C.F.R. § 133.101(g) to verify that the Facility remains eligible for such equivalent level of treatment. Dkt. #1 at 12-13.

3. The relevant Permit provisions affected by the Petition are the percent removal efficiency limits for BOD₅ and TSS, and the concentration and mass-based effluent limitations for TSS. *See* Permit at Part I.B.1, Table 1.
4. In a letter dated August 14, 2018, pursuant to 40 C.F.R. § 124.16(a)(2), the Region provided notification of the conditions in the permit that would be stayed pending this appeal. Dkt. #3. Specifically, the Region stayed the severable percent removal effluent limitations for TSS and BOD₅. The Permit effluent limitations for TSS based on treatment equivalent to secondary treatment were not stayed because such limits were carried forward from the existing permit and were not directly contested or included in the relief sought in the Petition. *See* Dkt. #1 at 13 (“ICL wishes to direct the Board and the Region to this issue, regardless of whether or not there exists a regulatory mechanism that would permit the Board or Region to amend the TSS effluent concentration limit in the context of this petition for review. That said, ICL recommends the Board and Region resolve this issue in the Permit.”). The conditions in the Permit that were not stayed went into effect thirty (30) days after the date of the letter pursuant to 40 C.F.R. § 124.16(a)(2).

5. At any time prior to thirty (30) days after the response brief is filed, the Region may withdraw portions or all of a contested permit. 40 C.F.R. § 124.19(j); *see also In re Wash. Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, Dec. 15, 2003). The Region has notified the EAB and interested parties that it is withdrawing the provisions of the Permit affected by the percent removal effluent limitations for TSS and BOD₅ and the effluent limitations for TSS based on treatment equivalent to secondary treatment, and will prepare a new draft permit and/or revised fact sheet in accordance with 40 C.F.R. § 124.6. Although withdrawn, the effluent limitations for TSS based on treatment equivalent to secondary treatment, which are identical to the limitations in the existing permit, will remain applicable pursuant to 40 C.F.R. § 124.17(c)(2).
6. The specific permit provisions that the Region will be withdrawing are those set forth in Paragraph 4, above.
7. The new draft permit and/or revised fact sheet will be subject to notice and comment, after which “the Regional Administrator shall issue a final permit decision.” 40 C.F.R. § 124.15(a). Within 30 days after a final permit decision, “any person who filed comments on the draft permit or participated in a public hearing on the draft permit may file a petition for review....” 40 C.F.R. §124.19(a)(2) and (3).
8. With the withdrawal of the permit provisions that are affected by the issues raised in the Petition, there are no longer any permit conditions that will be affected by an EAB decision.
9. Maintenance on the EAB’s docket of petitions for review of withdrawn permit provisions for an uncertain time period would not further the interests of

administrative efficiency or judicial economy, especially where those petitions may, in whole or in part, be rendered obsolete.

10. Under these circumstances, the Petition is moot. *In re City of Port St. Joe, Florida*, 5 E.A.D. 6, 9 (EAB 1994) (appeal mooted by Region's withdrawal of permit); *In re City of Haverhill Wastewater Treatment Facility*, NPDES Appeal No. 08-01, at 2 (EAB, Feb. 28, 2008) (Order Dismissing Petition for Review) (appeal mooted by Region's withdrawal of sole contested condition); *In re Keene Wastewater Treatment Plant* (NPDES Appeal No. 07-18), Order Noticing Withdrawal of Permit and Dismissing Portions of Petition for Review as Moot (EAB, Dec. 5, 2007) (dismissing as moot portions of petition challenging permit limits after the permitting authority provided notice that it was withdrawing those limits and preparing a new draft permit addressing the limits so withdrawn).
11. On October 4, 2018, the undersigned EPA counsel contacted ICL regarding this motion and the notification to withdraw certain permit provisions.
12. On October 4, 2018, in an e-mail message to the undersigned EPA counsel, ICL stated that it supported this motion.
13. Therefore, the Region requests that the EAB dismiss the Petition as moot.

DATED: October 10, 2018

Respectfully Submitted



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CERTIFICATE OF SERVICE

I certify that the foregoing "EPA Region 10's Motion to Dismiss" was sent to the following persons, in the manner specified, on the date below:

By electronic filing (and hard copy via U.S. Mail) to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
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By electronic and U.S. Mail to:

Matthew Nykiel
Conservation Associate
Idaho Conservation League
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Sandpoint, ID 83864

DATED: October 10, 2018



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U.S. EPA, Region 10