

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

In the Matter of:

Amherst Wastewater Treatment Plant

NPDES Permit No. MA- 0100218

NPDES Appeal No. 23-05

EPA REGION 1'S MOTION TO DISMISS PETITION FOR REVIEW AS MOOT

Respectfully submitted,

Kassandra Kometani, Esq.
Megan Edwards, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
5 Post Office Square
Boston, MA 02109
Tel: (617) 918-1852
(617) 918-1542
Email: Kometani.kassandra@epa.gov
Edwards.Megan@epa.gov

Dated by electronic signature

In re Amherst Wastewater Treatment Plant
NPDES Appeal No. 23-05

REGION 1'S MOTION TO DISMISS PETITION FOR REVIEW AS MOOT

SUMMARY

Pursuant to 40 C.F.R. § 124.19(f), EPA Region 1 (the “Region”) moves to dismiss as moot the Petition for Review in the above-captioned matter. The Petition is moot because the Region has withdrawn the contested Permit provisions pursuant to 40 C.F.R. § 124.19(j). The Region has ascertained that the Town of Amherst (“Petitioner”) does not oppose the motion. *See* 40 C.F.R. § 124.19(f)(2). For the reasons set forth herein, the Region requests the Board grant the motion.

I. ARGUMENT

The Region reissued a final National Pollutant Discharge Elimination System (“NPDES”) Permit (“Final Permit”), No. MA0100218, to the Petitioner for its Wastewater Treatment Plant on October 19, 2023. Petitioner filed a timely appeal on November 17, 2023, challenging the Final Permit’s season for the *E. coli* effluent limit and monitoring. *See* Petition at 1-2. The Final Permit reflected a change from the Draft Permit, extending the season from April 1 through October 31 to March 1 through October 31 (to begin after the first 12 months of the permit). Final Permit at Part I.A.1.

The Region did not file a brief responding to the Petition for Review. Rather, on December 7, 2023 and pursuant to 40 C.F.R. § 124.19(j), the Region provided notice that it was withdrawing the contested Permit provisions with the intent to prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn.¹ *See* Notice of Withdrawal & Notice of

¹ Until such time as the Region reissues a final permit pertaining to the withdrawn *E. coli* effluent limit and monitoring seasons, the corresponding provisions of the previously reissued permit (which was issued on June 26, 2012) shall remain in effect. *See In re City of Keene Wastewater Treatment Facility*, Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot, NPDES Appeal No. 07-18 (E.A.B. Dec. 2007). The Region notes that the remaining conditions of the permit are uncontested and severable from the contested and now-withdrawn conditions and will be fully effective on February 1, 2024, as noted in the Notice

Uncontested and Severable Permit Conditions (“Notice”); *see, e.g., In re Savoy Energy, L.P.*, 17 E.A.D. 200, 2023 (EAB 2016) (“[B]efore the 30-day window closes under section 124.19(j), a Region may unilaterally withdraw a permit and reissue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and reissuance.”). As described in the Notice, the Region intends to further develop the administrative record on this issue. Notice, at 2. Pursuant to 40 C.F.R. § 124.10, the new draft provisions will be subject to public notice and Petitioner, along with other interested parties, will have an opportunity to comment. Thus, the dismissal of the issue here would have no effect on Petitioner’s right to submit comments on the future draft *E. coli* effluent limit and monitoring requirement or right to seek Board review of any final permit, in accordance with 40 C.F.R. § 124.19.

The Region contends that the Petition is now moot because the Region has withdrawn the only permit provisions challenged in the Petition. *E.g., In re Starkist Samoa Co.*, Order Dismissing Petition for Review as Moot, NPDES Appeal No. 20-04, (E.A.B. 2020) (granting Region’s motion to dismiss because the Region withdrew all contested permit provisions and therefore the Petition was moot).

The Region contends that the Petition is now moot because the Region has withdrawn the only permit provisions challenged in the Petition. *E.g., In re Starkist Samoa Co.*, Order Dismissing Petition for Review as Moot, NPDES Appeal No. 20-04, (E.A.B. 2020) (granting Region’s motion to dismiss because the Region withdrew all contested permit provisions and therefore the Petition was moot).

Permit Provision Withdrawal & Notice of Uncontested and Severable Permit Conditions. *See* 40 C.F.R §§ 124.16(a)(2) and 124.60(b)(1).

The Region additionally notes that it notified the party (Connecticut River Conservancy) that submitted a comment on the draft permit regarding the *E. coli* effluent limit and monitoring season, as an “interested party” consistent with 40 C.F.R. § 124.19(j).

In re Amherst Wastewater Treatment Plant
NPDES Appeal No. 23-05

REGION 1’S MOTION TO DISMISS PETITION FOR REVIEW AS MOOT

The Region has consulted with EPA's Office of General Counsel, and the Office of General Counsel concurs with this Motion to Dismiss. The Region has also ascertained that Petitioner concurs with this motion pursuant to 40 C.F.R. § 125.19(f)(2).

II. CONCLUSION

For the reasons stated herein, the Region respectfully requests the Board Grant the Region's Motion and dismiss as moot the Petition for Review of NPDES Permit No. MA0100218.

STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I hereby certify that this response to the petition for review contains fewer than 7,000 words, in accordance with 40 C.F.R. § 124.19(f)(5).

Dated:

Megan Edwards, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below a copy of the foregoing Motion to Dismiss, in connection with *In re Town of Amherst*, NPDES Appeal No. 23-05, was sent to the following persons in the manner indicated:

By electronic filing:

Mr. Emilio Cortes
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3332
Washington, DC 20004

By email, as authorized by the Board's standing order dated Sept. 21, 2020:

Mr. Guilford Mooring
Superintendent
Amherst Public Works Department
586 South Pleasant Street
Amherst, MA 01002
mooringg@amherstma.gov

Mr. Lealdon Langley
MassDEP Division of Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
One Winter Street
Boston, MA 02108-4746
lealdon.langley@state.ma.us

Dated:

Megan Edwards, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
5 Post Office Square
Boston, MA 02109
Tel: (617) 918-1542
Email: Edwards.Megan@epa.gov