

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

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In re:)	
)	
American Samoa Power Authority)	
Utulei Sewage Treatment Plant)	Appeal No. NPDES 19-07
)	
NPDES Permit No. AS00200001)	
)	
)	

REGION IX’S MOTION TO DISMISS

The United States Environmental Protection Agency (EPA) Region IX (Region) respectfully moves the Environmental Appeals Board (EAB or Board) to dismiss as moot the Petition for Review (NPDES Permit Appeal 19-07) filed by the American Samoa Power Authority (Petitioner or ASPA) in the above-captioned matter. The Petition for Review is moot because the Region has withdrawn the provisions of the Permit contested by the Petitioner pursuant to 40 C.F.R. § 124.19(j).

BACKGROUND

On November 18, 2019, the Region issued National Pollutant Discharge Elimination System (NPDES) Permit No. AS00200001 (Permit) to the American Samoa Power Authority for the Utulei Sewage Treatment Plant.

On December 20, 2019, Petitioner filed a Petition for Review seeking review by the EAB of four Permit conditions; specifically, the underlying dilution factor and resulting effluent limitations for total nitrogen, total phosphorous, ammonia, and whole effluent toxicity.

By letter dated January 16, 2020, and filed with the Board, the Region provided notice to the Board, the permittee and interested parties that it was withdrawing the four contested effluent limitations and will modify these withdrawn provisions, as appropriate, and conduct public notice and comment consistent with 40 C.F.R. §§ 124.6 and 124.19(j) (Partial Withdrawal). In the same January 16, 2020 letter, the Region also provided notice that all the remaining conditions of the Permit are uncontested and severable from the contested and now withdrawn conditions, and therefore are fully effective thirty (30) days after the date of the notice letter, pursuant to 40 C.F.R. §§ 124.16(a)(2) and 124.60(b)(1).

DISCUSSION

At any time prior to thirty (30) days after filing the response to a petition, the Region may withdraw some or all of a permit and prepare a new draft permit addressing the portions so withdrawn pursuant to 40 C.F.R. § 124.19(j). *See In re Savoy Energy, L.P.*, 17 E.A.D. 200, 202-03 (EAB 2016) (“[B]efore the 30-day window closes under section 124.19(j), a Region may unilaterally withdraw a permit and re-issue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and reissuance.”). As noted, on January 16, 2020, the Region provided notice of its Partial Withdrawal of all the Permit conditions challenged by the Petitioner, and its plan to modify these provisions, as appropriate, and issue a new draft permit in accordance with 40 C.F.R. § 124.6.

The Region, in consultation with EPA’s Office of General Counsel and Office of Water, determined that it is appropriate to partially withdraw the Permit to further consider the dilution factor and resulting effluent limitations for the four pollutants appealed by Petitioner. The Region will issue a single revised draft permit, along with an associated fact sheet and an updated administrative record, for public review and comment in accordance with 40 C.F.R. §

124.6. Within 30 days after the Regional Administrator serves notice of issuance of a final permit decision under 40 C.F.R. § 124.15, any person who filed comments on the draft permit or participated in a public hearing may file a petition for review pursuant to 40 C.F.R. § 124.19(a).

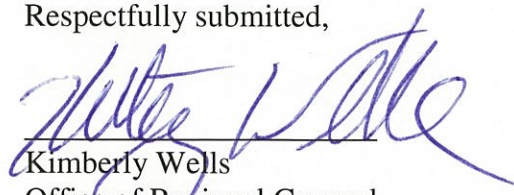
The Petition for Review is now moot because the Region has withdrawn all the Permit provisions that Petitioner appealed. Prior Board decisions support dismissing a petition as moot with respect to withdrawn permits or permit provisions. *See, e.g., In re City of Port St. Joe, Florida*, 5 E.A.D. 6, 8-9 (EAB 1994) (finding that the Region’s withdrawal of a permit “mooted any issue relative to the . . . permit” and removed the Board’s jurisdiction to review the permit on appeal); *In re City of Haverhill Wastewater Treatment Facility*, NPDES Appeal No. 08-01, slip op. at 1-2 (EAB Feb 28, 2008) (holding appeal mooted by Region’s withdrawal of the only contested permit conditions); *In re Keene Wastewater Treatment Plant*, NPDES Appeal No. 07-18, slip. op. at 2 (EAB Dec. 5, 2007) (dismissing as moot portions of the petition challenging withdrawn 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).

The Region has discussed this motion with the Petitioner and Petitioner does not object to dismissing the Petition for Review as moot.

The Region has also discussed this motion with the EPA Office of General Counsel and Office of Water, and both offices concur in the Region’s motion to dismiss. Accordingly, the Region hereby respectfully requests that the EAB dismiss the Petition for Review as moot.

Date: January 16, 2020

Respectfully submitted,



Kimberly Wells
Office of Regional Counsel

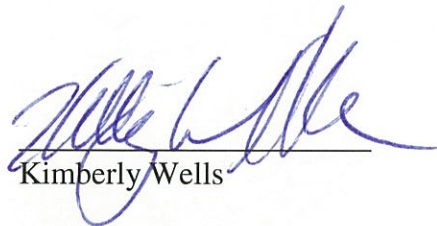
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **REGION IX'S MOTION TO DISMISS PETITION FOR REVIEW** to be served by electronic mail upon the persons listed below.

I also certify that I filed the original electronically with the Environmental Appeals Board.

Dated: January 16, 2020



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