

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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In the Matter of:))	Appeal No. NPDES 19-02
CITY OF NEZPERCE, IDAHO))	EPA REGION 10'S
NPDES Permit No. ID0020397))	MOTION FOR
_____))	VOLUNTARY REMAND

The United States Environmental Protection Agency, Region 10 (“Region”) respectfully requests the Environmental Appeals Board (“EAB”) to remand the National Pollutant Discharge Elimination System (“NPDES”) Permit issued to the City of Nezperce Wastewater Treatment Plant, NPDES Permit No. ID0020397 (“Permit”), in order for the Region to reconsider whether to include a compliance schedule for the new water quality-based ammonia effluent limits that are in the Permit. As grounds for the motion, the Region states as follows:

1. On July 25, 2019, the City filed with the EAB a Petition for Review (“Petition”) of the Permit issued to the City for the discharge of effluent from the City’s wastewater treatment plant (“Facility”). This Petition was assigned Appeal No. 19-02.
2. The main issue on appeal concerns whether the Region should have included a compliance schedule in the Permit for the new water quality-based ammonia limits.

3. The Permit provisions that are affected by the lack of a compliance schedule are the ammonia effluent limits. *See* Permit at Part I.B. On August 5, 2019, 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. Specifically, the Region stayed the effluent limitations for ammonia. The remaining conditions in the Permit went into effect thirty (30) days after the date of the letter pursuant to 40 C.F.R. § 124.16(a)(2).

4. Pursuant to 40 C.F.R. § 124.19(j), the Region may unilaterally withdraw a permit up to thirty (30) days after the response brief is filed. 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). In addition, the Board has discretion to grant a voluntary remand beyond what is allowed under 40 C.F.R. § 124.19(j), by virtue of its inherent authority to manage its docket in the most meaningful and efficient manner possible. *See* 40 C.F.R. § 124.19(n) (“[T]he Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair and impartial adjudication of issues arising in an appeal....”).

5. The Board will generally grant a voluntary remand when the permitting authority decides to make substantive changes to the permit or otherwise wishes to reconsider some element of the permit decision before reissuing the permit. *See In re Desert Rock*, 14 E.A.D. 484, 493 (EAB May 21, 2009). This allows the permit issuer to fully consider relevant issues and make a sound final decision, and it is consistent with the Board’s policy that favors allowing the regions to make permit condition decisions. *Id.* at 495-96.

6. Here, the issue on appeal is whether the Region should have included a compliance schedule in the Permit for the ammonia effluent limits. After reviewing the City’s Petition as well as the administrative record, the Region requests a remand to reconsider whether to include an ammonia compliance schedule in the Permit.

7. Since, upon reconsideration, the Region could determine that a compliance schedule should not be included in the Permit, the Region requests the EAB grant a voluntary remand without prejudice. This will allow the City to reserve its rights to appeal this issue.

8. If the Region decides to include a compliance schedule in the Permit, the Region will provide for a limited public comment period on the addition of a compliance schedule in the Permit. 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 of 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).

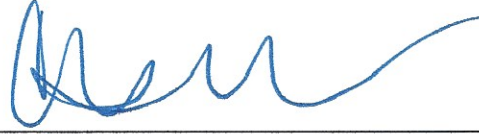
9. On September 16, 2019, the undersigned EPA counsel contacted counsel for the City regarding this motion.

10. On September 17, 2019, during a phone conversation with the undersigned EPA counsel, counsel for the City stated that the City does not oppose this motion.

11. For the reasons stated above, the Region respectfully requests the Board to remand the Permit to the Region without prejudice to allow the Region to reconsider whether to include a compliance schedule for the new ammonia limits in the Permit. In light of the motion for remand, the Region does not intend to file a substantive response to the Petition by September 30, 2019.

DATED: September 27, 2019

Respectfully Submitted



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CERTIFICATE OF SERVICE

I certify that the foregoing “EPA Region 10’s Motion for Voluntary Remand” was sent to the following persons, in the manner specified, on the date below:

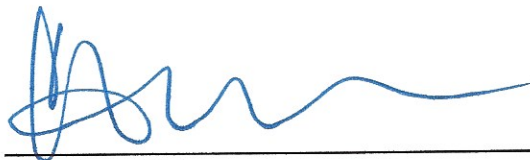
By electronic filing to:

U.S. Environmental Protection Agency
Clerk of the Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

By electronic and U.S. mail to:

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DATED: September 27, 2019



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