

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD

\_\_\_\_\_ )  
In the Matter of: )

STAR SEWER AND WATER DISTRICT )  
WASTEWATER TREATMENT PLANT )

NPDES Permit No. ID0023591 )  
\_\_\_\_\_ )

Appeal No. NPDES 15-07

**EPA REGION 10'S  
MOTION TO DISMISS**

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 Star Sewer & Water District (“Star”) contesting the issuance of National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID0023591 (“Permit”). As grounds for the motion, the Region states as follows:

1. On April 27, 2015, Star filed with the EAB a Petition for Review of the Permit issued to Star for the discharge of effluent from Star’s wastewater treatment plant (“Facility”). This Petition for Review was assigned Appeal No. NPDES 15-07.
2. The main issue on appeal concerns whether the Region correctly identified the designated use(s) assigned to the Lawrence Kennedy Canal, the waterbody that receives Star’s effluent. The Region applied cold water aquatic life and primary

contact recreation to the waterbody whereas Star contends that the Region should have only applied agricultural water supply.

3. The permit provisions that are affected by the application of cold water aquatic life and primary contact recreation to the discharge are the effluent limitations for ammonia and chlorine as well as an ancillary provision dealing with the compliance schedule for chlorine.
4. As such, on May 5, 2015, 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 following conditions were stayed: (1) the interim and final total ammonia as N concentration and mass loading effluent limits, (2) the final total residual chlorine concentration and mass loading effluent limits, and (3) Task 4 of the chlorine compliance schedule. 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).
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 contested designated use determination and will prepare a new draft permit in accordance with 40 C.F.R. § 124.6.
6. The specific permit provisions that the Region will be withdrawing are those set forth in Paragraph 4, above.

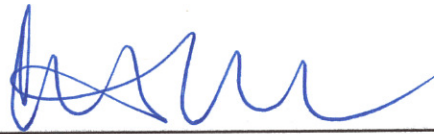
7. The new draft permit will be subject to notice and comment, after which “the Regional Administrator shall issue a final permit decision.” 40 C.F.R. § 124.15(a). Within 30 days after a final permit decision, “any person who filed comments on the draft permit or participated in a public hearing on the 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 for Review, there are no longer any permit conditions that will be affected by an EAB decision.
9. Moreover, the Region will be re-evaluating the designated use issue during the new permit proceedings. Any interested party, including Star, can submit comments on the new permit action during the public comment period for that new draft permit.
10. 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.
11. Under these circumstances, the Petition for Review 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).

12. On July 20, 2015, the undersigned EPA counsel contacted counsel for Star, counsel for the State of Idaho, and the Idaho Conservation League regarding this motion and the notification to withdraw certain permit provisions. All of these parties have stated that they do not oppose this motion.
13. Therefore, the Region requests that the EAB dismiss the Petition as moot.

DATED: July 21, 2015

Respectfully Submitted



---

Courtney Weber  
Assistant Regional Counsel  
EPA Region 10  
1200 Sixth Avenue, Suite 900, ORC-113  
Seattle, WA 98101  
Tel: 206-553-1477  
Fax: 206-553-0163  
Email: [weber.courtney@epa.gov](mailto:weber.courtney@epa.gov)

Of Counsel:  
James Curtin  
Attorney Advisor  
Water Law Office  
Office of General Counsel  
(202) 564-5482

**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  
Mail Code 1103M  
Washington, DC 20460-0001


By electronic and U.S. Mail to:

Kevin J. Beaton  
Stoel Rives, LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, Idaho 83702-5958

Douglas M. Conde  
Deputy Attorney General  
Idaho Department of Environmental Quality  
1410 N. Hilton, 2nd Floor  
Boise, Idaho 83706

Justin Hayes  
Program Director  
Idaho Conservation League  
PO Box 844  
Boise, Idaho 83701

DATED: July 21, 2015



---

Courtney Weber  
Assistant Regional Counsel  
U.S. EPA, Region 10