

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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)	
In the Matter of:)	Appeal No. NPDES 17-06
)	
CITY OF SANDPOINT)	EPA REGION 10'S
WASTEWATER TREATMENT PLANT)	MOTION TO DISMISS
)	
NPDES Permit No. ID0020842)	
_____)	

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. ID0020842 (“Permit”). As grounds for the motion, the Region states as follows:

1. On October 10, 2017, ICL filed with the EAB a Petition for Review (“Petition”) of the Permit issued to the City of Sandpoint (“Sandpoint”) for the discharge of effluent from Sandpoint’s wastewater treatment plant (“Facility”). This Petition was assigned Appeal No. NPDES 17-06.
2. The main issue on appeal concerns whether it was appropriate for the Region to rely upon mixing zones in the Idaho Department of Environmental Quality’s (“IDEQ’s”) Clean Water Act (“CWA”) Section 401 certification which were

established based upon a mixing zone water quality standard that has not yet been approved by EPA.

3. The permit provisions that are affected by the mixing zone issue are the concentration and mass-based effluent limitations for total phosphorus. *See* Permit at Part I.B.1, Table 1.
4. On October 20, 2017, 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 interim and final total phosphorus as P concentration and mass loading effluent limits. 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 mixing zone issue and will prepare a new draft permit and/or revised fact sheet 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 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.

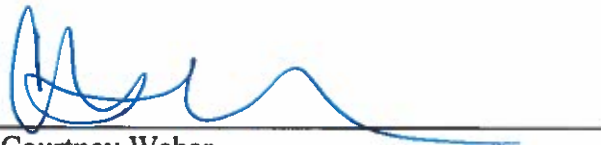
§124.19(a)(2) and (3).

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 December 8, 2017, the undersigned EPA counsel contacted ICL regarding this motion and the notification to withdraw certain permit provisions.
12. On December 26, 2017, in an e-mail message to the undersigned EPA counsel, ICL stated that it does not oppose this motion.

13. Therefore, the Region requests that the EAB dismiss the Petition as moot.

DATED: January 9, 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:

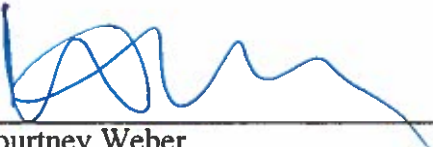
By electronic filing (and hard copy via U.S. Mail) to:

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

By electronic and U.S. Mail to:

Matthew Nykiel
Conservation Associate
Idaho Conservation League
PO Box 2308
Sandpoint, ID 83864

DATED: January 9, 2018



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