

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

)	
In re:)	
Vickery Environmental, Inc.)	RCRA Appeal No. 19-01
Permit No. OHD 020 273 819)	
)	

ORDER DISMISSING PETITION FOR REVIEW

On October 7, 2019, Vickery Environmental, Inc. (“Vickery”) filed a petition before the Environmental Appeals Board (“Board”) seeking review of a hazardous waste management permit issued under the Resource Conservation and Recovery Act (“RCRA”) by U.S. EPA Region 5 (“Region”). In its petition, Vickery objected to certain permit conditions relating to various air emissions standards. *See* Petition for Review at 1-3. The Board, in response to the parties’ joint motions, twice extended the deadline for the Region to file a response to the petition. *See* Order Granting Extension of Time and Establishing Briefing Schedule (Nov. 1, 2019) (Docket No. 4); Order Granting Second Motion for Extension of Time (Dec. 27, 2019) (Docket No. 10). The current response deadline is March 9, 2020.

On March 5, 2020, the Region requested that the Board remand the Permit to the Region and dismiss this Petition, stating among other things that the Region has determined that revision of the challenged permit conditions is appropriate. *See* EPA Region 5’s Unopposed Motion for Voluntary Remand and Joint Motion to Dismiss (“Motion”) at 3 (citing 40 C.F.R § 124.19(j)).

Under the regulations governing this appeal, the Region “at any time prior to 30 days after [it] files its response to the petition for review * * * may, upon notification to the

Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under §124.6 addressing the portions so withdrawn.” 40 C.F.R. § 124.19(j). In this case, the Region has not yet filed its response to the petition and, thus, may *unilaterally* withdraw the permit as sought. *Id.*

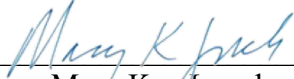
Here, the Region has clearly expressed its intent to withdraw the permit, and to revise and reissue the final permit addressing the issues raised in the Petition for Review. *See* Motion at 3. Vickery concurs with the motion. *Id.* For these reasons, the Board concludes that the Region seeks *to withdraw* the permit and that dismissal of the Petition for Review is appropriate. The Board therefore acknowledges the Region’s withdrawal of the Permit as sought and **DISMISSES** the Petition for Review in RCRA Appeal No. 19-01.

Under 40 C.F.R. § 124.19(j), when the Region issues a new draft permit under § 124.6, “the new permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.”

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: March 6, 2020

By: 
Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Dismissing Petition for Review** in the matter of *Vickery Environmental, Inc.*, RCRA Appeal No. 19-01, were sent to the following persons in the manner indicated:

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Dated: March 6, 2020



Eurika Durr
Clerk of the Environmental Appeals Board