

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

In re:)
)
 Starkist Samoa Co.) NPDES Appeal No. 20-04
)
 NPDES Permit No. AS0000019)
)

ORDER DISMISSING PETITION FOR REVIEW AS MOOT

On February 26, 2020, Region 9 of the U.S. Environmental Protection Agency issued a new final National Pollution Discharge Elimination System (“NPDES”) permit to Starkist Samoa Co. (“Starkist”). The permit authorizes Starkist to discharge wastewater from its tuna cannery facility to Pago Pago Harbor in American Samoa, in accordance with the terms and conditions of the permit. On March 18, 2020, Starkist filed a motion for a thirty-day extension of time to file a petition for review of the permit. As justification for its motion, Starkist cited business disruptions caused by the coronavirus that greatly complicated the process of evaluating the permit and preparing a petition for review. The Region supported Starkist’s motion. In a March 19, 2020 order, the Board granted Starkist’s motion, extending the petition filing deadline to April 27, 2020.

On April 27, 2020, Starkist filed a petition for review of the new NPDES permit, seeking review of three permit conditions: (1) the dissolved oxygen receiving water limit; (2) the receiving water monitoring requirements at coral reef stations; and (3) an annual priority pollutant scan. The Region’s response to the petition was due May 27, 2020.

On May 21, 2020, the Region filed a motion seeking dismissal of the petition as moot. With the motion, the Region submitted a letter dated May 20, 2020, in which the Region notifies

the Board, Starkist, and interested parties that it has withdrawn the three contested permit provisions and intends to modify them, as appropriate, and conduct public notice and comment on any new provisions consistent with 40 C.F.R. §§ 124.6 and 124.19(j).

Specifically, the Region has withdrawn: (1) Part 1.A.3.h (dissolved oxygen requirements); (2) Part 1.E.1.g (coral reef monitoring requirements), including the associated map of the coral reef stations and the asterisk (*) footnote only to the Part I.E.1 table that references sampling depth requirements for the coral reef monitoring stations; and (3) Part 1.B table 1 (priority pollutant scan requirements). The Region clarifies that, until such time as a new final permit is issued, the corresponding provisions from the previous permit issued to Starkist will apply as follows: (1) Part 1.B.9 of the 2008 permit will apply in place of the withdrawn dissolved oxygen requirement; (2) receiving water monitoring at the coral reef stations will not be required, as no comparable provision in the 2008 permit exists; and (3) Part II.B.1 of the 2008 permit will apply in place of the withdrawn annual priority pollutant scan requirement

The Region notes that all remaining conditions of the permit are uncontested and severable from the contested and now-withdrawn conditions, and therefore are fully effective thirty days after the date of the letter, pursuant to 40 C.F.R. §§ 124.16(a)(2) and 124.60(b)(1).

The Region contends that Starkist's petition is now moot because the Region has withdrawn all the permit provisions that Starkist challenged. The Region notes that the permitting regulations at 40 C.F.R. § 124.19(j) provide that, at any time prior to thirty days after the permit issuer files its response brief, the permit issuer may withdraw portions or all of a contested permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions

of the permit that have been withdrawn. *See, e.g., 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 reissue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and reissuance.”). The Region reports that it consulted with EPA’s Office of General Counsel and Office of Water in making this decision to partially withdraw Starkist’s permit. The Region represents that Starkist supports this motion.

Having considered the motion and the representations therein, the Region’s motion is hereby **GRANTED** and the petition for review is **DISMISSED AS MOOT**.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: **May 26 2020**

By: 
Kathie A. Stein
Environmental Appeals Judge

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

CERTIFICATE OF SERVICE

I certify that copies of the **Order Dismissing Petition for Review as Moot** in the matter of *Starkist Samoa Co.*, NPDES Appeal No. 20-04, were sent to the following persons in the manner indicated:

By Electronic Mail:

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Dated: **May 26 2020**



Eureka Durr
Clerk of the Board