

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

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In re:	)	
	)	
Johnston Atoll Chemical Agent	)	RCRA Appeal No. 98-5
Disposal System	)	
	)	
Permit No. 570-090-001	)	

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**ORDER DISMISSING APPEAL**

The United States Department of the Army, petitioner in the above-entitled matter, has reached agreement with U.S. EPA Region IX concerning a resolution of the matter that will involve the issuance of a proposed Revised Final Permit Decision. Petitioner and the Region have executed a Settlement Agreement in which the Region undertakes to issue the Revised Final Permit Decision for public comment, reserving the right to make changes to the Revised Final Permit Decision "only if necessary, in response to public comments." Settlement Agreement at 2. In the Settlement Agreement, petitioner undertakes "to withdraw its appeal and accept the Revised Final Permit," reserving the right to challenge "only those terms and conditions of the new permit decision that are modified by Region IX following the public comment period or incorporated into the permit, pursuant to [the] agreement, as a permit modification." Id. In a letter to the Environmental Appeals Board dated December 3, 1998, petitioner

has notified the Board of the execution of the Settlement Agreement and the consequent withdrawal of the petition for review in RCRA Appeal No. 98-5.

The permit decision at issue in RCRA Appeal No. 98-5 is, accordingly, remanded to Region IX for issuance of the revised permit decision contemplated by the Settlement Agreement, and RCRA Appeal No. 98-5 is hereby dismissed. Dismissal of the appeal is without prejudice to the petitioner's ability, as provided in the Settlement Agreement, to commence a subsequent appeal challenging permit terms that are neither included in the Region's original June 11, 1998 permit decision nor identified, in Exhibit A to the Settlement Agreement, as revisions to which the parties have agreed.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_/s/\_\_\_\_\_  
Ronald L. McCallum  
Environmental Appeals Judge

Dated: 12/23/98

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of the Johnston Atoll Chemical Agent Disposal System, RCRA Appeal No. 98-5, were served upon the following persons by first-class mail:

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\_\_\_\_\_/s/\_\_\_\_\_  
Annette Duncan  
Secretary

Dated: 12/23/98