

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

In re:)
)
)
Marcos Sanchez Second Unit)
School) NPDES Appeal No. 00-22
)
NPDES Permit No. PR0025402)
)

ORDER DISMISSING PETITION FOR REVIEW

On August 21, 2000, Mr. Guillermo Lluch Irizarry, Safety Engineering and Conservation Director of the Public Building Authority of Puerto Rico ("Petitioner") filed a petition for review with the U.S. Environmental Protection Agency's ("EPA") Environmental Appeals Board ("Board") seeking review of two special conditions contained in an alleged "Final Draft of National Pollutant Discharge Elimination System (NPDES) permit" for the Marcos Sanchez Second Unit School. See Petition at 1.

In particular, Petitioner seeks Board review of special conditions 14 to 16, which require in pertinent part, quarterly acute toxicity tests and monthly monitoring for six parameters (Cadmium, Copper, Lead, Manganese, Phenolic substances, and Sulfide). *Id.* at 2-3. Petitioner argues that the facility discharges "only domestic sanitary waste water, [making it]

unnecessary to conduct any type of toxicity test or analyses like the ones describe [sic] in the special conditions * * *." *Id.* at 3. Petitioner also contends that the facility "already possesses a NPDES permit, which does not require analyses of the parameters establish [sic] in the special conditions 14 to 16 * * *." *Id.* at 4. Petitioner seeks removal of Special Conditions 14 to 16 from the NPDES permit.¹

On October 17, 2000, at the Board's request, the U.S. Environmental Protection Agency, Region II (the "Region") filed a response to the petition. The Region seeks dismissal of the petition on the ground that it is prematurely filed. See Response at 2. The Region explains that the Region has not yet issued a final permit for the facility. *Id.* The Region mailed the draft permit to the Petitioner on September 25, 2000. The draft permit was publicly noticed on September 29, 2000, and is currently subject to a 30-day public comment period which is scheduled to end on October 29, 2000. *Id.* at 3. The Region surmises that Petitioner intended to appeal a final water quality certificate issued by the Puerto Rico Environmental Quality Board

¹Although Petitioner refers to special conditions 14 to 16, Petitioner neither recites the text of special condition 15 in the petition, nor does Petitioner specifically argue why special condition 15 constitutes error or otherwise requires review. Accordingly, it appears that petitioner did not intend to seek review of special condition 15, and the Board declines to review such special condition of its own accord.

("EQB") on June 27, 2000. According to the Region, the water quality certificate contains special conditions 14 to 16, and was appealable to the EQB within 20 days of issuance. Response at 2-3. The Region asserts that Petitioner may have mistakenly filed his petition on the water quality certificate with the Board.

Id.

For the following reason, the petition for review is dismissed. Only final permit decisions can be appealed to the Board. 40 C.F.R. § 124.19(a). If Petitioner is seeking review of the Region's final permit decision, the petition for review is premature since the Region has not yet issued a final permit. Petitioner may file an appeal with the Board on the final permit in accordance with all of the requirements of 40 C.F.R. part 124 within 30 days of issuance of the final permit by the Region.² To the extent that Petitioner seeks to appeal the final water quality certificate issued by the EQB, Petitioner's appeal is improperly submitted to this Board.

²The Region has stated that it will treat Petitioner's petition as public comments on the draft permit. Response at 2, note 4.

Accordingly, the Petition for Review is hereby DISMISSED.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 10/25/00

By: _____/s/
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the matter of the Marcos Sanchez Second Unit School, NPDES Appeal No. 00-22, were sent to the following persons in the manner indicated:

Certified Mail
Return Receipt
Requested:

Ing. Guillermo Lluch Irizarry
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Pouch Mail:

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Dated: 10/26/00

_____/s/
Annette Duncan
Secretary