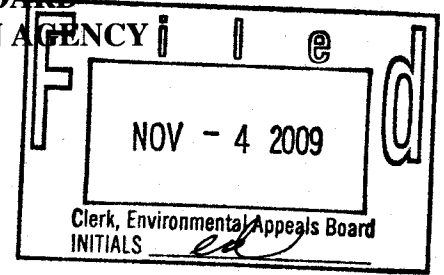


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**



In re: )

CH2M Hill Plateau Remediation )  
Company, LLC, Hanford )  
Nuclear Reservation )

NPDES Permit No. WA-002591-7 )

NPDES Appeal No. 09-08

**ORDER DISMISSING PETITION AS MOOT**

On June 23, 2009, U.S. Environmental Protection Agency Region 10 (the "Region") issued to CH2M Hill Plateau Remediation Company, LLC ("CH2M") a National Pollution Discharge Elimination System ("NPDES") permit, number WA-002591-7 (the "Permit"). On July 23, 2009, CH2M filed a petition requesting that the Environmental Appeals Board grant review of one Permit condition found at Part I.B.2. Consistent with the Board's practice, the Clerk of the Board issued a letter dated July 30, 2009, notifying the Region that CH2M had filed a petition for review and setting September 15, 2009, as the due date for the Region's response and for the Region to file certain other documents.

On August 20, 2009, the Region issued its notice that the Permit condition challenged in this appeal, Part I.B.2, is stayed and is severable from the remainder of the Permit and, therefore, pursuant to 40 C.F.R. §§ 124.16(a)(2) and 124.20(d), the uncontested Permit conditions are fully effective and enforceable as of September 22, 2009. On August 31, 2009, the Region and CH2M jointly filed a motion requesting a stay of this matter and stating that the Region intends to

withdraw, pursuant to 40 C.F.R. § 124.19(d), the contested Permit condition, Part I.B.2, soon after the other Permit conditions go into effect on September 22, 2009. By Order dated September 2, 2009, the Board granted a stay of briefing on the merits of this case and instructed the parties to show cause why this case should not be dismissed when the Region files its notice of withdrawal of the contested permit condition.

On September 30, 2009, the Region filed notice withdrawing Permit condition Part I.B.2 and the Region filed a motion requesting that the Board dismiss the Petition. Also, on September 30, 2009, CH2M filed its response to the Board's show cause order, requesting in the alternative that the Board not dismiss CH2M's Petition or "affirm that [CH2M] retains its full rights to appeal in the event that the Region does not fully and completely delete the objectionable language from the permit."

Upon consideration, the Board hereby dismisses CH2M's Petition as moot. The permitting regulations authorize the permit issuer, "at any time" before the Board decides to "grant or deny review," to "withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn," and the regulations state further that the "new draft permit shall proceed through the same process for a public hearing as would apply to any other draft permit subject to this part." 40 C.F.R. § 124.19(d). "After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision," *id.* § 124.15(a), and "[w]ithin 30 days after a \* \* \* final permit decision \* \* \* has been issued under § 124.15 of this part, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision." *Id.* § 124.19(a). These regulations authorize petitions for

review of a "final permit decision." It is self-evident that a withdrawal of a permit condition, followed by a new draft permit and attendant procedural rights noted above, is not a final permit decision. Accordingly, where, as here, the petition pending before the Board only objected to the now withdrawn permit condition and raised no other arguments, it is appropriate to dismiss the petition as moot. This dismissal is not a determination on the merits of any arguments raised in the petition and, accordingly, the dismissal does not preclude CH2M from raising those arguments in its public comments submitted to the Region on the draft permit.

So ordered.

Dated:

*Nov. 4, 2009*

ENVIRONMENTAL APPEALS BOARD

By:

*Charles J. Sheehan*

Charles J. Sheehan,  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition as Moot in the matter of CH2M Hill Plateau Remediation Company, LLC, NPDES Appeal No. 09-08, were sent to the following persons in the manner indicated:

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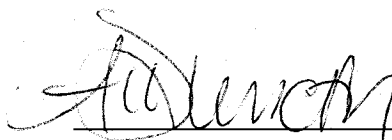
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Dated: NOV - 4 2009

  
Annette Duncan  
Secretary