



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

In re:)	
)	
Hecla Limited Lucky Friday Mine)	NPDES Appeal No. 19-01
)	
NPDES Permit No. ID0000175)	
)	

ORDER DISMISSING PETITION FOR REVIEW

Hecla Limited Lucky Friday Mine (“Hecla Limited”) has petitioned for review of the National Pollution Discharge Elimination System (“NPDES”) permit issued by U.S. Environmental Protection Agency, Region 10, for the Lucky Friday Mine, which is just outside Mullan, Idaho, and adjacent to the South Fork of the Coeur d’Alene River. The Environmental Appeals Board (“Board”) granted a stay of the proceeding on August 16, 2019, so that Hecla Limited could pursue a challenge to the Idaho Board of Environment Quality’s (“Idaho DEQ’s”) certification of Hecla Limited’s NPDES permit under section 401 of the Clean Water Act, 33 U.S.C. § 1341. The parties represented that the issues raised by Hecla Limited in its challenge to the Idaho DEQ certification of the permit affect those raised in its petition to the Board.

On January 8, 2020, Hecla Limited and Idaho DEQ settled their dispute concerning the Idaho DEQ certification and Idaho DEQ issued a proposed modified certification for public comment on that same day. U.S. EPA Region 10 and Hecla Limited’s Joint Motion to Dismiss 2 (Jan. 21, 2020) (“Joint Motion”). Under the settlement agreement, Idaho DEQ will finalize the modified certification by February 14, 2020. Now, Region 10 and Hecla Limited

have jointly moved that the Board dismiss as moot Hecla Limited's petition for review of its NPDES permit.

As grounds for this motion, the Region and Hecla Limited assert that, as discussed below, the matters in Hecla Limited's petition are no longer in dispute due to the Region's withdrawal of certain provisions in the NPDES permit as a result of the Hecla Limited/Idaho DEQ settlement and Hecla Limited's request for dismissal of various claims in its petition.

Withdrawal of Permit Conditions. Hecla Limited's petition challenged permit conditions imposing several effluent limitations and monitoring/testing requirements. *See* Hecla Limited's Petition for Review 5 (July 22, 2019). As required by 40 C.F.R. § 146.16(a)(2), the Region identified the following permit conditions as contested by Hecla Limited's petition and therefore stayed by the filing of the petition:

- (a) the effluent limits and monitoring requirements for [Hecla Limited's] Outfall 001; (b) the effluent limits and monitoring requirements for copper; (c) the compliance schedule for copper; (d) the effluent limits and monitoring requirements for mercury; and (e) the chronic triggers for whole effluent toxicity ("WET") [testing].

Joint Motion at 2.

Idaho DEQ's newly proposed certification for Hecla Limited's permit affects permit conditions pertaining to copper and effluent and monitoring limitations for Outfall 001. Based on these proposed certification changes, the Region has notified the Board and Hecla Limited that it has withdrawn the following permit conditions:

- a. The effluent limitations and monitoring requirements in Permit Part I.B.1. applicable to Outfall 001; and
- b. The effluent limitations and monitoring requirements in Permit Part I.B.1. Tables 2 and 3 for Copper, the Copper Compliance Level in Permit Part I.B.9. and the Copper Compliance Schedule in Permit Part II.A.

Id. at 3.

An EPA regional office may unilaterally withdraw a permit at any time prior to thirty days after filing the response to a petition and re-issue a new draft permit, so long as it contemporaneously notifies the Board and interested parties of the withdrawal and prepares a new draft permit addressing the withdrawn portions of the permit. 40 C.F.R. § 124.16(j). In this instance, the Region withdrew the permit prior to filing its response, notified the Board and Hecla Limited that it had done so, and stated that it “will prepare a new draft permit and/or revised fact sheet in accordance with 40 C.F.R. § 124.6.” Joint Motion at 3. Thus, the Region’s withdrawal of the specified permit conditions meets the requirements set forth in 40 C.F.R. § 124.19(j).

Because these permit conditions have been withdrawn, the Region and Hecla Limited request that Hecla Limited’s petition challenges to these conditions be dismissed. Joint Motion at 4.

Dismissal of Certain Petition Claims. As to the contested permit conditions in Hecla Limited’s petition that have not been withdrawn by the Region, Hecla Limited requests that the Board dismiss its petition challenge to these conditions. *Id.* at 3. The permit conditions as to which Hecla Limited is requesting dismissal of its petition are “the effluent limitations in Permit Part IB.1, Tables 2 and 3 for Mercury and the chronic triggers for Whole Effluent Toxicity (WET) in Permit Part I.C.3.” *Id.*

In light of the fact that the actions by the Region and Hecla Limited have eliminated all of the challenges contained in Hecla Limited’s petition for review, the petition for review is hereby dismissed, as requested.

The Region acknowledged in the Joint Motion that 40 C.F.R. § 124.19(j) requires that it must “prepare a new draft permit under § 124.6 addressing the portions [it has] withdrawn.” *See*

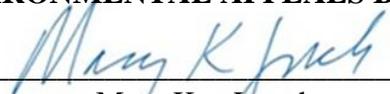
Joint Motion at 3. Section 124.19(j) further provides that “[t]he new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.” 40 C.F.R. § 124.19(j). Similarly, the same appeal procedures as would apply to any final permit, including the exhaustion requirements in section 124.19(l)(1), will apply to the new final permit.

So ordered.¹

Dated: January 24, 2020

ENVIRONMENTAL APPEALS BOARD

By: _____



Mary Kay Lynch
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 hereby certify that copies of the foregoing **Order Dismissing Petition for Review** in the matter of *Hecla Limited Lucky Friday Mine*, NPDES Appeal No. 19-01, were sent to the following persons by email:

Attorney for Petitioner

Kevin Beaton
Stoel Rives LLP
101 S. Capitol Blvd., Ste. 1900
Boise, Idaho 83702
Email: kevin.beaton@stoel.com

Attorneys for Region 10

Courtney Weber (Mail Code: 11-C07)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Street, Ste. 155
Seattle, WA 98101
Email: weber.courtney@epa.gov

Pooja Parikh
Attorney/Advisor
Office of General Counsel
U.S. Environmental Protection Agency
Washington, DC 20460
Email: parikh.pooja@epa.gov

Attorney for State of Idaho

Mark Cecchini-Beaver
Deputy Attorney General
Department of Environmental Quality
1410 N. Hilton, 2nd Floor
Boise, Idaho 8306
Email: mark.cecchini-beaver@deq.idaho.gov

Dated: January 24, 2020



Annette Duncan
Administrative Specialist