

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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)
In the Matter of:)

) Appeal No. NPDES 19-01

)
) HECLA LIMITED LUCKY FRIDAY
) MINE, LUCKY FRIDAY UNIT)

) **JOINT MOTION TO DISMISS**

)
) NPDES Permit No. ID0000175)
_____)

The United States Environmental Protection Agency, Region 10 (“Region”) and Hecla Limited Lucky Friday Mine (“Hecla”) respectfully requests the Environmental Appeals Board (“EAB”) to dismiss as moot the Petition for Review filed by Hecla contesting the issuance of the National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID0000175 (“Permit”). As grounds for the motion, the parties state as follows:

1. On July 22, 2019, Hecla filed with the EAB a Petition for Review (“Petition”) that challenged certain conditions of the Permit. This Petition was assigned Appeal No. 19-01.
2. The Petition raised the following issues with respect to the Permit:
 - a. Establishment of biotic ligand model (“BLM”) based copper effluent limits;
 - b. Application of the same effluent limits to Outfalls 001 and 002; and
 - c. Failure to establish flow-tiered limits in the Permit.

3. On August 2, 2019, pursuant to 40 C.F.R. § 124.16(a)(2), the Region provided notification of the conditions in the permit that would be stayed pending this appeal. Specifically, the Region stayed (a) the effluent limits and monitoring requirements for 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”). The remaining conditions in the permit went into effect thirty (30) days after the date of the letter pursuant to 40 C.F.R. § 124.16(a)(2).

4. On July 26, 2019, Hecla filed a Petition to Initiate Contested Case and Request to Stay 401 Certification (“401 Certification Petition”) with the State of Idaho Board of Environmental Quality that challenged the Idaho Department of Environmental Quality’s (“IDEQ’s”) Clean Water Act Certification (“401 Certification”). The 401 Certification Petition raised the same or similar issues with respect to contested permit conditions in the EAB Petition. To allow for settlement discussions between Hecla and IDEQ in the 401 Certification Petition, Hecla and IDEQ agreed to stay the 401 Certification Petition proceedings.

5. Since the conditions in the 401 Certification affect the contested effluent limits and conditions in the Permit, the Board granted the parties’ Joint Motion to Stay the Petition before the EAB. The stay of the EAB proceedings ends on January 21, 2020.

6. On January 8, 2020, Hecla and IDEQ entered into a settlement agreement in the 401 Certification Petition proceedings. Attached to the settlement agreement is a proposed modified 401 Certification. *See* Attachment A. IDEQ issued the proposed modified 401 Certification for public comment the same day it entered into the settlement agreement with Hecla. *See* Attachment B.

7. Pursuant to the settlement agreement, IDEQ will issue a final modified 401 Certification on or before February 14, 2020, which will replace the previous 401 Certification.

8. The proposed changes to the 401 Certification would affect the contested NPDES permit conditions related to copper and the effluent limitations associated with Outfall 001.

9. At any time prior to thirty (30) days after the response brief is filed, the Region may withdraw portions or all of a contested permit. 40 C.F.R. § 124.19(j); *see also In re Wash. Aqueduct Water Treatment Plant*, NPDES Appeal No. 03-07, slip op. at 2 (EAB, Dec. 15, 2003). The Region is notifying the EAB through this motion that it is withdrawing the provision of the Permit affected by the proposed modified 401 Certification and will prepare a new draft permit and/or revised fact sheet in accordance with 40 C.F.R. § 124.6.

10. Specifically, the Region is withdrawing the following 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.

11. In addition, pursuant to 40 C.F.R. §124.19(k), Hecla is requesting the EAB to dismiss the Petition with regard to the remaining contested conditions concerning the effluent limitations in Permit Part I.B.1, Tables 2 and 3 for Mercury and the chronic triggers for Whole Effluent Toxicity (WET) in Permit Part I.C.3. These contested conditions relate to conditions in the 401 Certification which were challenged by Hecla in the 401 Certification Petition. The proposed modified 401 Certification does not propose any changes with regard to these permit conditions. As such, Hecla is requesting dismissal of the Petition with respect to these conditions and, upon dismissal, these permit conditions will go into effect.

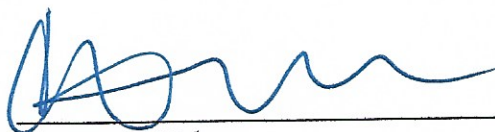
12. With the withdrawal of the permit provisions and Hecla's request to dismiss the remaining contested conditions, there would no longer be any permit conditions that will be affected by an EAB decision.

13. Maintenance of the EAB's docket of petitions for review of withdrawn permit provisions for an uncertain time period would not further the interests of administrative efficiency or judicial economy, especially where those petitions may, in whole or in part, be rendered obsolete by issuance of a new draft permit.

14. Therefore, the parties request that the EAB dismiss the Petition as moot.

DATED: January 21, 2020

On behalf of Region 10:



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CERTIFICATE OF SERVICE

I certify that the foregoing "Joint Motion to Dismiss" was sent to the following persons, in the manner specified, on the date below:

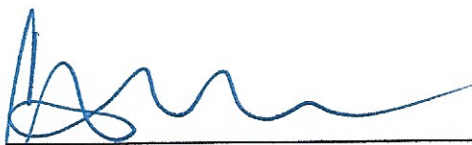
By electronic filing to:

U.S. Environmental Protection Agency
Clerk of the Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001
Fax: 202-233-0121

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DATED: January 21, 2020



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