

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

_____)
In the Matter of:)
)
Battle Road Condominium Trust)
Wastewater Treatment Facility)
)
NPDES Appeal No. 15-09)
NPDES Permit No. MA0031658)
_____)

ASSENTED-TO MOTION TO DISMISS THE PETITION FOR REVIEW AS MOOT

On July 6, 2015, the Battle Road Farms Realty Trust (“Petitioner”) petitioned the Environmental Appeals Board (“EAB” or “Board”) for review of a final National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA Region 1 authorizing discharges of wastewater effluent from the Battle Road Farms Wastewater Treatment Facility (“WWTF”) to the headwaters wetlands of the Shawsheen River in Massachusetts. Petitioner specifically contested: (1) the monthly average total phosphorus limit of 0.1 mg/l, effective between April 1 and October 31; (2) the absence of a compliance schedule to achieve the total cadmium limit of 0.13 ug/l; and (3) the absence of a compliance schedule to achieve the total lead limit of 0.86 ug/l. *See* Petition at 1.

Under the regulations governing the EAB appeals process, the Regional Administrator may, at any time prior to 30 days after filing the response to the petition and upon notification to the Board, unilaterally withdraw portions of the permit and prepare a new draft permit under 40 C.F.R. § 124.6 addressing the portions so withdrawn. 40 C.F.R. § 124.19(j); *see also* 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). The Region has decided to exercise that right by withdrawing

the total phosphorus limit in its entirety, as well as the total cadmium and total lead limits insofar as they are not subject to schedules of compliance. *See* Notice of Withdrawal of Permit Conditions and Notice of Uncontested and Severable Conditions, dated July 22, 2015 (filed July __, 2015). The Region will commence new draft permit proceedings to address the issues so withdrawn. The Region intends to consult with the permittee when developing the new schedules, and the permittee will of course have the opportunity to comment on whatever schedules are contained in the new draft permit. As additionally described in the Notice, the Final Permit's total cadmium limit of 0.13 ug/l and lead limit of 0.86 ug/l will continue to be stayed until the date the new compliance schedules for such limits come into effect.

Having withdrawn the aspects of the Final Permit that are the subject of the Petition, the Region submits that the issues presented in that Petition have been rendered moot and, therefore, respectfully requests its dismissal. *See In re E.I. DuPont De Nemours & Co.*, RCRA Appeal Nos. 13-01 & 13-02 (EAB May 14, 2014) (Order Dismissing Appeals); *In re Teck Alaska, Inc.*, NPDES Appeal No. 10-04, slip op. at 4-5 (EAB Apr. 30, 2010) (Order Dismissing Petitions for Review in Part and Denying Cross-Motion to Stay the Entire Permit) (holding that Region's partial withdrawal of contested permit provisions rendered sections of the Petition for Review moot); *In re San Jacinto River Auth.*, NPDES Appeal 07-19 (March 28, 2008) (Order Dismissing Petition for Review); *In re City of Keene Wastewater Treatment Facility*, NPDES Appeal No. 07-18 (EAB Dec. 5, 2007 (Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review as Moot). Moreover, dismissal of these issues would have no effect on the permittee's rights to submit comments on the new draft permit or to seek Board review of any revised final permit in accordance with 40 C.F.R. § 124.19. *In re San Jacinto*, slip op. at 4. Finally, the Region has contacted counsel for Petitioner regarding dismissal of these issues and

represents to the Board that Petitioner has no objection to this motion. *See* 40 C.F.R.
§ 124.19(f)(2).

Dated: July 31, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Assented-to Motion to Dismiss the Petition for Review as Moot, in the matter of Battle Road Farm Reality Trust, NPDES Appeal No. 15-09, was served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

By Electronic Mail and U.S. Mail:

William E. Taylor
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

Dated: July 31, 2015

Samir Bukhari