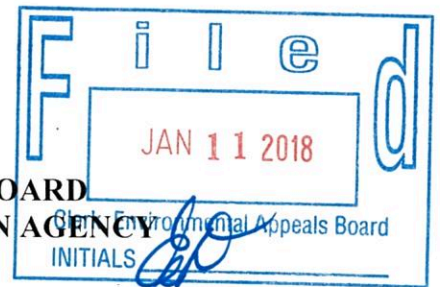


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
))
City of Sandpoint) NPDES Appeal No. 17-06
Wastewater Treatment Plant))
))
NPDES Permit No. ID0020842))
_____))

ORDER DISMISSING PETITION FOR REVIEW AS MOOT

On September 5, 2017, Region 10 of the U.S. Environmental Protection Agency reissued NPDES Permit No. ID0020842 to the City of Sandpoint, Idaho. The permit authorizes the City of Sandpoint Wastewater Treatment Plant to discharge treated wastewater to the Pend Oreille River, a regulated water of the United States, subject to certain effluent limits and conditions. On October 6, 2017, the Idaho Conservation League (“ICL”) filed a petition for review of Permit No. ID0020842 with the Environmental Appeals Board (“Board”), pursuant to EPA permitting regulations at 40 C.F.R. § 124.19(a). In its petition, ICL challenged the Region’s decision, in establishing phosphorus effluent limits for City of Sandpoint discharges, to employ a mixing zone policy that was not included in Idaho’s EPA-approved state water quality standards.

On October 26, 2017, the Region sought and subsequently received an extension of time to file a response to ICL’s petition for review. *See* Order Granting Motion for Extension of Time to File Response to Petition for Review (EAB Oct. 30, 2017) (extending response deadline to January 16, 2018). On January 9, 2018, the Region filed a notice with the Board withdrawing the disputed phosphorus limits pursuant to 40 C.F.R. § 124.19(j). The Region stated that it failed to consider comments ICL had previously submitted on the mixing zone issue but that it intends to do so now. The Region stated that it will then clarify the basis for establishing a mixing zone,

if appropriate, modify, if necessary, the phosphorus limits, and prepare new draft permit conditions to replace the withdrawn provisions. The Region will provide notice and an opportunity for the public to comment on the new permit decision. In the meantime, the other provisions of the City of Sandpoint's prior NPDES permit will remain in effect.

The Region filed a companion motion on January 9, 2017, to dismiss ICL's petition for review of NPDES Permit No. ID0020842. In its motion, the Region points out that at any time prior to thirty days after the filing of a response brief, the Region has authority to withdraw part or all of a final permit decision and prepare a new draft permit addressing the portions so withdrawn, provided appropriate prior notice of withdrawal is given. *See* 40 C.F.R. § 124.19(j). In this case, the Region contends that its withdrawal of the disputed phosphorus limits has rendered ICL's appeal of those limits moot, and thus it requests that the Board dismiss the pending petition for review. The Region reports that it contacted ICL in December and determined that ICL does not object to the Board's granting of the motion to dismiss.

For good cause shown, ICL's appeal of the phosphorus effluent limits is hereby **DISMISSED WITH PREJUDICE**. This dismissal with prejudice has no effect on ICL's right to petition the Board for review of future EPA action with respect to NPDES Permit No. ID0020842 in accordance with 40 C.F.R. § 124.19.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

January 11, 2018

By:

Kathie A. Stein

Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Dismissing Petition for Review as Moot** in the matter of *City of Sandpoint Wastewater Treatment Plant*, NPDES Appeal No. 17-06, were sent to the following persons in the manner indicated:


By Facsimile and First Class U.S. Mail:

Matthew Nykiel
Conservation Associate
Idaho Conservation League
Post Office Box 2308
Sandpoint, Idaho 83864
telephone: (208) 265-9565
facsimile: (208) 265-9650
e-mail: mnykiel@idahoconservation.org

By Facsimile and EPA Pouch Mail:

Courtney Weber
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Mail Code ORC 113
Seattle, Washington 98101
telephone: (206) 553-1477
facsimile: (206) 553-1762
e-mail: weber.courtney@epa.gov

Dated: JAN 11 2010



Annette Duncan
Administrative Specialist