UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE REGION SIX REGIONAL ADMINISTRATOR

In the matter of
CONCERNED CITIZENS FOR NUCLEAR SAFETY
REQUEST TO TERMINATE NPDES PERMIT
NM 0028355 FOR LOS ALAMOS NATIONAL
LABORATORY RADIOACTIVE LIQUID WASTE
TREATMENT FACILITY DUE TO LACK OF
DISCHARGES

PETITIONER'S REPLY TO RESPONSE FILED BY EPA REGION COUNSELTO REQUEST TO TERMINATE NPDES PERMIT # NM0028355 AS TO OUTFALL 051 FOR THE RADIOACTIVE LIQUID WASTE TREATMENT FACILITY

1. This Reply is filed on behalf of the Petitioner, Concerned Citizens for Nuclear Safety ("CCNS"), in response to contentions contained in the Response to Request to Terminate NPDES Permit #NM0028355 as to Outfall 051 for the Radioactive Liquid Waste Treatment Facility and Motion to Dismiss ("Response") filed and served by EPA Regional Counsel for Region 6 on September 22, 2016.

2. The Response, filed nearly 14 weeks after the Request was filed, notes that the Request was filed under 40 C.F.R. § 124.5, which is correct. Regional Counsel appears to argue that, since the Regional Administrator has not decided to initiate a termination proceeding, there is no jurisdiction under 40 C.F.R. Part 22, and so the Request should be dismissed for lack of jurisdiction.

3. Petitioner agrees that the Regional Administrator has not yet ruled on the Request.

4. However, 40 C.F.R. § 124.5 specifically mandates that the Regional Administrator "shall" rule on a Request to terminate a NPDES permit. Sections 124.5 requires that the Regional Administrator "shall" rule in one of three alternative ways, *i.e.*, to deny the

request to modify, revoke and reissue, or terminate a permit (§ 124.5(b)); to start a proceeding to revoke and reissue a permit (§ 124.5(c)); or to start a proceeding to terminate a permit (§ 124.5(d)). If the Regional Administrator decides to start a proceeding to terminate a permit, as CCNS requests here, he must do so under Part 22. (See (§ 124.5(d)).

5. Thus, the Regional Administrator has a mandatory duty to rule. The Regional Counsel concurs that "the Regional Administrator must provide a written response." (Response at 3). As the Administrator has not yet done so, it would be clearly improper—and contrary to the express terms of §124.5—to dismiss this proceeding before the Regional Administrator has an opportunity to perform his mandatory duty.

6. As the Regional Counsel points out (Response ¶ 13), under § 124.5, one alternative open to the Regional Administrator is to initiate a Part 22 proceeding to terminate the NPDES permit as to Outfall 051. Thus, it would clearly violate the terms of § 124.5 to dismiss this proceeding for lack of jurisdiction under Part 22, before the Regional Administrator has even decided whether to initiate such a proceeding.

7. The Response does not claim that the Agency's letter to counsel dated December 18, 2015 constitutes the necessary ruling under 40 C.F.R. § 124.5 by the Regional Administrator on a request to terminate. Before the June 17, 2016 Request, there was no request to terminate. The Agency's December 18, 2015 letter responds to counsel's letter dated November 13, 2015 to the Regional Administrator, which gave notice of Petitioner's concern, and requested "an expedited opinion from your NPDES division and the Region 6 legal staff, stating the justification, if any, for issuance of the referenced

permit for Outfall 051," expressing hope for a resolution "without the necessity of our litigating the issue." Counsel's letter does not request the termination of the permit, nor does it invoke, or refer to, § 124.5. Accordingly, the Agency's December 18, 2015 letter contains the requested explanation of its policy on this issue, but contains no ruling, does not refer to § 124.5, and is issued by a member of the NPDES staff, not the Regional Administrator, who alone is authorized to rule under § 124.5.

8. Under the explicit language of 40 C.F.R. § 124.5, the Regional Administrator must make a ruling on behalf of the Agency as to the process to be followed on this Request. Until he rules, dismissal is clearly unauthorized. We await his ruling.

Respectfully submitted,

CONCERNED CITIZENS FOR NUCLEAR SAFETY

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September 29, 2016

CERTIFICATE OF SERVICE

By our signatures above, we, Lindsay Lovejoy and Jonathan Block, hereby certify that on September 29, 2016 we mailed, U.S. Postal Service First Class postage pre-paid, copies of the foregoing Reply to:

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