Lindsay A. Lovejoy, Jr.
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EXHIBIT 7

23 February 2017
Thomas Rucki, Esq.
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 100
Dallas, TX 76202

Re: Request to Terminate NPDES Permit #NM028355 as to
Outfall #051 for Radioactive Liquid Waste Treatment Facility

Dear Mr. Rucki—

We have your email message dated February 16, 2017, asking for a copy of the letter dated November 13, 2015, to which the December 18, 2015 letter from Ms. Stacey Dwyer, Associate Director of the NPDES Permits and TMDL Branch of Region 6, responds. The November 13, 2015 letter is attached. This letter should accompany that November 13, 2015 letter in the record of this matter.

We sent the November 13, 2015 letter in an attempt to initiate a dialogue with the Region to determine whether there was a policy basis that justified the issuance of an NPDES permit for Outfall #051 at Los Alamos National Laboratory, an outfall that since 2010 has discharged nothing. The November 13, 2015 letter clearly does not request the termination of the permit. Instead, it asks for the "justification, if any, for issuance of the referenced permit for Outfall 051 under the circumstances described (*i.e.*, no discharge since 2010, no need to discharge)." It would be expressly contrary to its language to construe the letter as a 40 C.F.R. § 124.5 request for termination of the permit.

The fact that you have simultaneously invited Ms. Dwyer to state, on the record, whether she wrote her response, dated December 18, 2015, as "authorized representative" of the Regional

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Administrator, raises a reasonable inference that you intend to assert that our clients applied for termination of this permit, which request had already been refused by the Regional Administrator. It is also reasonable to infer that you might then maintain that our clients should have initiated an appeal at that time, and that the Regional Administrator may therefore, on some logic, ignore our detailed presentation dated June 17, 2016. However, we believe that such an attempt fails to address the following the pertinent facts:

First, the November 13, 2015 letter does not request that the NPDES permit be terminated. No such request appears in the document, nor does it cite 40 C.F.R. § 124.5.

Second, the December 18, 2015 response likewise does not refer to 40 C.F.R. § 124.5 and does not come from the Regional Administrator. Ms. Dwyer is not and was not the Regional Administrator, and in her letter she does not purport to speak for him or claim to be his "authorized representative." To the contrary, she signed the letter as Associate Director of the NPDES Permits and TMDL Branch of Region 6. *Nothing in her letter tells the reader that it constitutes a decision by the Regional Administrator that could or should be appealed.* Therefore, if you were to claim that her letter constitutes a 40 C.F.R. § 124.5 refusal by the Regional Administrator, which should have been appealed, such argument would rest upon an improper attempt to retroactively manufacture evidence of the intent of the former Regional Administrator after his departure from office.

Third, in any case, the exchange of letters in late 2015 cannot excuse the Agency's failure to rule in a timely manner upon the Request that we filed with it on June 17, 2016. Nothing in Ms. Dwyer's December 18, 2015 letter suggests that the Agency had then considered and ruled upon the detailed matters of fact and law raised in the Request of June 17, 2016—not surprisingly, since the November 13, 2015 letter contained no request for termination. Rather, the letter asked for clarification of the Agency's position on the LANL NPDES permit.

Please place the November 13, 2015 letter and this letter in the record. Please exclude from the record any statements made in response to your order dated February 16, 2017, which requests Ms. Dwyer retroactively to manufacture evidence of the former Regional Administrator's intent, and proceed with the current Regional Administrator's ruling upon the merits of the Request dated June 17, 2016.

Very truly yours,

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13 November 2015

Ron Curry, Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Suite 1200
Dallas, TX 75202

RE: NPDES Permit NM0028355 covering Outfall #051, Radioactive Liquid Waste Treatment Facility ("RLWTF"), Los Alamos National Laboratory ("LANL"), Los Alamos, NM

Dear Administrator Curry:

The undersigned attorneys represent two New Mexico citizens organizations: Communities for Clean Water and Concerned Citizens for Nuclear Safety.

Can we avoid potentially unnecessary litigation? To that end, by this letter we are asking you to look at a National Pollutant Discharge Elimination System ("NPDES") Permit that appears to us to be unnecessary. The above referenced permit was issued in 2014 following an inspection report, filed with your offices, in which the inspector noted that there has been no discharge from Outfall 051 since 2010. The RLWTF was recently redesigned and rebuilt specifically as a zero-discharge facility. Significantly, the RLWTF now has two methods of eliminating discharges in place. The first, in regular use, is a boiler system that evaporates the liquid portion of the waste. Sludge is removed and processed under the existing Resource Conservation and Recovery Act ("RCRA") permit for LANL. The second method is a passive solar evaporative system that is in a "ready to go" status awaiting a permit. However, the permit under which it would be made functional, rather than a RCRA permit, is a ground water discharge permit (DP-1132), administered under state law by the New Mexico Environment Department ("NMED") Ground Water Quality Bureau. This, we believe, is the intersection of at least two problems with the issuance of the above referenced NPDES permit.

First, the NPDES permit, by being issued, provides RLWTF with a Waste Water Treatment Unit ("WWTU") regulatory exemption from RCRA. The RCRA provisions that would otherwise be applicable to the facility, at the same time as providing more stringent oversight of the facility, would also require public processes as well as issuance of public documents and notices, closure and post-closure plans for the facility for public vetting at the time a permit is out for public comment, and a host of other regulatory requirements that are not paralleled by the applicable State ground water regulations or NPDES requirements. We submit that, since the new RLWTF was specifically designed and built as a zero-discharge facility, it does not require an NPDES permit and is not eligible for the WWTU exemption.

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Second, from a statutory perspective, current federal case law (*National Pork Producers Council v. U.S. EPA*, 635 F.3d 738 (5th Cir. 2011); *Waterkeeper Alliance, Inc. v. American Farm Bureau Federation*, 399 F.3d 486 (2d Cir. 2005)) states that, if a facility has no discharge, as defined under the Clean Water Act, the U.S. Environmental Protection Agency has no jurisdiction to issue an NPDES permit.

For these reasons, we believe that we could sue to terminate the current NPDES permit for Outfall 051, thus requiring NMED to regulate the RLWTF under RCRA. Before bringing suit, we felt that we should bring this matter to your attention and request that you obtain 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 under the circumstances described (i.e., no discharge since 2010, no need to discharge). Our hope is that you and your staff will find a way to eliminate this problem without the necessity of our litigating the issue.

Thank you for your consideration, attention and prompt reply.

Sincerely,

/s/

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