EXHIBIT 9

FILED
2017 MAR -2 PM 4:05
REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)
	)
Concerned Citizens for Nuclear Safety	)
(CCNS) Request To Terminate NPDES	)
Permit #NM0028355 (Permit) For Los	)
Alamos National Laboratory Radioactive	)
Liquid Waste Treatment Facility	)
	)

On June 20, 2016, CCNS sent a letter to the United States Environmental Protection Agency, Region 6 (EPA), seeking termination of the Permit pursuant to 40 C.F.R. § 124.5 because of the alleged lack of discharge from Outfall 051. Specifically, CCNS requested that the Regional Hearing Clerk "refer this matter to the Regional Judicial Officer" per 40 C.F.R. § 22.51. Since the initial filing, both parties have set forth arguments addressing substantive and procedural issues. After reviewing the parties' briefs, as well as the pertinent evidence, I conclude that I am not an "authorized representative" who may respond to a 40 C.F.R. § 124.5 request. This authority rests with the Regional Administrator or his or her "authorized representative" As such, CCNS may, if it so chooses, re-file this matter with the Regional Administrator.

33 U.S.C. § 1342(b)(1) provides that the appropriate authorities may terminate a permit with cause. The option to terminate is available if there is a change in discharge (as CCNS alleges is occurring in Outfall 051). 40 C.F.R. § 122.64(a)(4). However, to terminate a permit, one must follow the procedures set forth in 40 CFR Part 124. 40 C.F.R. § 122.64(b). Termination, revocation, or modification may occur at the behest of an interested party or "upon the Director's initiative." 40 C.F.R. § 124.5(a). An interested party must do so "in writing and shall contain facts or reasons supporting the request." *Id.* 40 C.F.R. § 124.5(b) provides that if the Director (defined as the "Regional Administrator...or an authorized representative" per 40 C.F.R. § 124.2(a)) decides the request is not justified, he or she shall provide a brief written response setting forth his or her reasoning for such denial. An appeal of the Director's denial lies with the Environmental Appeals Board. 40 C.F.R. § 124.5(b). If the Director elects to terminate the permit, he or she must file a complaint under 40 CFR Part 22 to initiate termination proceedings. 40 C.F.R. § 124.5(d).

In this matter, CCNS specifically asked that I review the Permit in order to decide whether or not there is justification to terminate it, reasoning that as the Part 22 presiding officer,

I am authorized to resolve this matter.[1] That reasoning is misplaced. While I am the designated Regional Judicial Officer for Region 6, the aforementioned regulations clearly provide that this matter only comes before me if the Regional Administrator chooses to initiate a Part 22 complaint to terminate the Permit. While in that situation I would assume my role as impartial presiding officer[2] and reach a conclusion, in this matter, I lack the legal authority to make such a determination as I am not the Regional Administrator or an authorized representative of same.

I therefore dismiss this action before me on procedural grounds. This decision in no way impacts the ability of CCNS to proceed with this matter before the Regional Administrator, and if CCNS so elects, it may move forward at any time pursuant to 40 C.F.R. § 124.5. Furthermore, my decision herein does not allow for the ability to appeal to the Environmental Appeals Board - that route is only available if the Regional Administrator denies a request, which has not occurred in this matter.

It is so ORDERED.

Dated this 2nd day of March, 2017.

THOMAS RUCKI
REGIONAL JUDICIAL OFFICER

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[1] The parties have discussed at length whether or not a November 13, 2015, letter addressed to the EPA Regional Administrator acted as a formal request to terminate the Permit pursuant to 40 C.F.R. § 124.5 and whether EPA's December 18, 2015, response acted as an official denial to the November letter. Both parties have ultimately indicated in their respective briefs that the letter was not such a formal request. Whether or not one could construe the November letter as a request to the Regional Administrator to rescind or modify a permit pursuant to 40 C.F.R. § 124.5 however, is a debate we need not explore today as this case is not properly before me, as explained herein.

[2] The February 23, 2017, letter filed by counsel for CCNS makes a claim that the manufacturing of evidence may occur in this case based on my February 16, 2017, order. Specifically, CCNS counsel urges that I exclude from the record any response made by EPA to my order "which requests [EPA] retroactively to manufacture evidence of the former Regional Administrator's intent." It is a bold statement to imply that my order requested EPA to, or that EPA would, retroactively manufacture evidence. To make such baseless statements or infer such a nefarious intent to my order is not up to the high standards by which we licensed attorneys are obligated to comply.

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk for the Region 6 office of the Environmental Protection Agency, hereby certify that a TRUE AND CORRECT copy of the document was served upon the parties on the date and in the manner set forth below:

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Lorena Vaughn

Lorena S. Vaughn
Regional Hearing Clerk