

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
ENVIRONMENTAL APPEALS BOARD**

In the matter of

**CONCERNED CITIZENS FOR NUCLEAR SAFETY
REQUEST TO TERMINATE PERMIT NM0028355
FOR LOS ALAMOS NATIONAL LABORATORY
RADIOACTIVE LIQUID WASTE TREATMENT
FACILITY DUE TO LACK OF DISCHARGES**

NPDES Appeal No. 17-05

**CONCERNED CITIZENS FOR NUCLEAR SAFETY
REPLY SUBMISSION PURSUANT TO 40 C.F.R. §§ 124.2 AND 124.5(b)**

Appellant, Concerned Citizens for Nuclear Safety (“CCNS”), hereby replies to the EPA Region 6 Response, dated October 18, 2017 (“EPA Br.”), and requests an opportunity for oral argument before the Environmental Appeals Board.

I. CAUSE FOR TERMINATION UNDER 40 CFR § 122.64 IS ESTABLISHED.

1. Region 6 asserts that there has been no change in any condition that would support termination of the NPDES Permit NM0028355 (the “Permit”) under the applicable regulation, 40 C.F.R. § 122.64. (EPA Br. 6). LANL (*i.e.*, Los Alamos National Security (“LANS”) and the U.S. Department of Energy (“DOE”)) state that “[t]here has been no change to any condition that impacts the nature and extent of any discharge from Outfall 051 from the date the NPDES Renewal Application was submitted in 2012 until the current date [.]” Saladen Aff. at ¶ 7(A) (Oct. 12, 2017).

2. Uncontroverted evidence shows recent root-and-branch changes in the Radioactive Liquid Waste Treatment Facility (“RLWTF”), adding new equipment that creates additional methods to dispose of treated waste water, transforming the RLWTF into a “zero-liquid-discharge” facility, and enabling LANL to discontinue use of Outfall 051, thus requiring termination of the NPDES permit as to Outfall 051.

3. The Clean Water Act, at 33 U.S.C. § 1342(b)(1), authorizes issuance of:

permits which—

* * *

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge[.]

Id.

4. The applicable regulation, 40 C.F.R. § 122.64, follows the language of the Clean Water Act. Part 122 was proposed in 1978. 43 Fed. Reg. 37078 (Aug. 21, 1978). The portion at § 122.31 addressed “Modification and Revocation.” *Id.* at 37081. The proposed rule, at § 122.31, authorized modification or revocation in whole or in part for cause, expressly giving *examples*—not an exhaustive list:

(d)(3) A temporary or a permanent reduction or elimination of any discharge controlled by the permit (*e.g.*, plant closure, the promulgation of any applicable effluent standard or prohibition under section 307 of the act, etc.)[.]

Id.

5. The 1978 proposed regulation fully embraced permit termination where an NPDES-permitted discharge ends. The preamble for the final regulation, 44 Fed. Reg. 32854 (June 7, 1979), first, equated the term “revoked” with the statutory term “terminated.” *Id.* at 32867. Second, it clarified that “termination” means “the revocation of an existing permit, where a new permit is not reissued.” *Id.* at 32867-68. Third, it revised § 122.31(d)(3) so that it would state the statutory term “cause” as it appears in 33 USC § 1342(b)(1)(C)(iii), explaining that “EPA has revised this paragraph to be consistent with the Act.” *Id.* at 32868. The final regulation thus states *as examples* of a cause for modification, revocation and reissuance, or termination, the following basis:

A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the permit (*e.g.*, plant closure, termination of discharge by connection to a POTW . . .).

Id. at 32912.

6. This language is contained in the current regulation, § 122.64, which was later expanded to refer to “sludge use or disposal practice” and edited to delete references to changes in law, none of which apply here.

7. In 1980 EPA published consolidated permitting regulations. The section on termination of permits, 40 CFR § 122.16, incorporated the language quoted above, taken from the Clean Water Act. 45 Fed. Reg. 33290, 33429-30 (May 19, 1980). In 1983 EPA issued deconsolidated permitting regulations. 48 Fed. Reg. 14146 (April 1, 1983). At § 122.64 it contained the same language previously included in § 122.16, still expressly giving as an “example” the following:

A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

Id.

8. In 2000, EPA made amendments to “streamline” NPDES procedures. EPA again specifically authorized the termination of a NPDES permit where the discharge was terminated by “elimination of the flow”:

The Director shall follow the applicable procedures in part 124 or part 22 of this chapter, as appropriate (or State procedures equivalent to part 124) in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Director shall follow part 124 of this chapter or applicable State procedures for termination.

65 Fed. Reg. 30886, 30909 (May 15, 2000).

9. This recent provision makes clear, if clarity were thought lacking, that when a discharge is terminated, the NPDES permit shall be terminated. The preamble confirms this: “The transaction cost for the government to undergo notice and comment is high. This high cost seems unjustified where a permittee has terminated its discharge and, thereafter, its permit thus eliminating any future threat to the environment.” 65 Fed. Reg. 30886, 30895 (May 15, 2000).

10. LANL now advertises the RLWTF as a “zero-liquid-discharge” facility. Request Ex. W, Form 2C at page 7 of 9. Under applicable procedures, LANL operates the RLWTF so that Outfall 051 emits no discharge. Previously, discharges occurred.

But now, LANL has emitted nothing from Outfall 051 for seven years. Clearly, there has been a “change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge . . . controlled by the permit.” 40 C.F.R. § 122.64(a)(4).

The changes at the RLWTF have been intentional and expressly planned to reduce liquid discharges to zero: A February 2008 Waste Management Conference report states that the “new RLWTF” would be a “zero-liquid-discharge” facility :

The new RLWTF is being designed as a complete replacement for the existing facility that will receive liquid waste feed, treat the liquid stream, collect and package any solid wastes, and then discharge the treated effluent to a new Zero Liquid Discharge (ZLD) system.

Exhibit 13 to Petition at 1.

11. The 2008 LANL Site-Wide EIS (“SWEIS”) states that discharges from the RLWTF were declining (at 4-46) and that conversion to a zero liquid discharge format was one “option.” Request Ex. JJ, SWEIS at 5-38; *see* G-76. A September 26, 2008 record of decision (“ROD”) by LANL, based on the SWEIS, states that LANL had decided to pursue:

Final design of a new [RLWTF], and design and construction of the Zero Liquid Discharge Facility component of this treatment facility to enable LANL to continue to treat radioactive liquid wastes.

Request Ex. LL at 13.

12. A July 10, 2009 ROD (74 Fed. Reg. 33232) states that LANL has decided to:

[c]onstruct and operate a new [RLWTF] at TA-50 together with the operation of a zero liquid discharge facility at TA-52 as an auxiliary action[.]

Request Ex. MM at 7 of 9.

13. On August 19, 2010, LANL advised EPA Region 6 that it was evaluating a trailer-mounted evaporation system with sufficient capacity to ensure evaporation is greater than current effluent production, *i.e.*, it would operate at zero liquid discharge. Request Ex. O, Letter (Aug. 19, 2010). LANL kept Region 6 notified of progress on zero liquid discharge tanks. LANL stated that NNSA and LANS were designing concrete tanks, which will provide a “third pathway” for the discharge of treated water (along with the mechanical evaporator and Outfall 051). Request Ex. T, Letter (Sept. 28, 2011).

14. In the January 2012 Renewal Application for the NPDES permit, LANL was explicit that changes were forthcoming at the RLWTF that would affect the regulated discharge. The Renewal Application states:

The configuration of the RLWTF and Outfall 051 will be changing in the next 5 years due to the construction of two new Concrete Evaporation Tanks at Technical Area (TA) 52 under the Zero Liquid Discharge (ZLD) Project. These evaporation tanks will receive treated effluent from the RLWTF and will reduce the volume of treated effluent discharged to Outfall 051.

Request Ex. W at 7 of 9.

15. After the January 2012 Renewal Application, the solar evaporation tanks were built. Clearly, those tanks were one of the major “changes” leading to “either a temporary or a permanent reduction or elimination of any discharge . . . controlled by the permit.” 40 C.F.R. § 122.64(a)(4).

16. Region 6 asserts that no “change” has occurred, because there has been “no shutdown of the facility or the RLWTF, elimination of the outfall, or other permanent change that ends the possibility of a discharge.” EPA Br. 6. Clearly, however, any

discharge from Outfall 051 has been eliminated. By LANL's logic, LANL could convert the RLWTF into a totally different use, one that generates no waste water, and, so long as LANL leaves a pipe hanging out into Mortandad Canyon, there is no regulatory "change" because there still is "the possibility of discharge," and Outfall 051 would be entitled to an NPDES permit. Yet, 40 C.F.R. § 122.64 merely requires a change "in any condition." Here, there have been massive changes: the RLWTF has been entirely reconstructed; under the Zero Liquid Discharge project two new systems have been added to dispose of treated waste water—a mechanical evaporator and solar evaporation tanks—and based on those equipment changes, LANL has changed the operation of the RLWTF, rendering Outfall 051 dry and dormant for seven years, replaced by the evaporation equipment and, moreover, the addition of two giant stainless steel holding tanks.

17. Despite these massive and obvious changes to the waste treatment system at the RLWTF, Region 6 still insists that no change has occurred that "requires" elimination of a discharge. EPA Br. 6. Indeed, LANL has deliberately left the pipe in place to Outfall 051. Furthermore, of course, LANL, as operator of the RLWTF, determines whether to direct treated water to Outfall 051, keep it in the giant stainless steel holding tanks, dispose of it in the mechanical evaporator, or, soon, place it in the outdoor solar evaporation tanks. LANL has not disclosed its calculations, but since November 2010 LANL has consistently failed to discharge anything through Outfall 051, indicating that, consistent with LANL's plan to establish a zero-liquid-discharge facility, factors relevant to LANL *require*—logically, economically, environmentally, legally or otherwise—that no discharges flow through Outfall 051. After seven years, LANL has,

plainly, abjured any plan, intent, or expectation to use Outfall 051. The “change” required in the regulation has been and continues to be satisfied.

II. CCNS WAS NOT REQUIRED TO SEEK TERMINATION BASED UPON FACTS AVAILABLE IN 2013.

18. EPA Region 6 insists that CCNS should have demanded termination of the NPDES permit as to Outfall 051 when the permit was renewed in a public process in 2013-14. EPA Br. 13-15. However, while the comments and responses were public, the RLWTF and its operations have *never* been public. The public can only address the operations of the RLWTF based on facts LANL chooses to disclose (or not). In the permitting process, LANL made several representations as to future use of Outfall 051, claiming, *inter alia*, that discharges through Outfall 051 would be required because of maintenance needs of the mechanical evaporator, and, possibly, malfunction of that unit, which was then the only alternative to Outfall 051. It has since become evident that LANL’s claims of a need to discharge from Outfall 051 were unfounded.

19. Numerous statements by LANL in the 2013-14 permitting record communicate that Outfall 051 would be put to use. LANL’s Renewal Application seeks re-permitting of eleven outfalls, including Outfall 051. Some of the eleven outfalls are listed as “potential no-flow outfall.” Outfall 051 is *not so listed*. Exhibit 14 to Petition. LANL represented, in effect, that Outfall 051 was *not even potentially* a “no-flow” outfall.

20. LANL’s Fact Sheet on Outfall 051, contained in the Renewal Application, states that Outfall 051 “discharges treated radioactive liquid wastewater.” Request Ex.

W, Outfall 051 fact sheet at 1 of 9. Further, it explains that it is likely to be needed in the future:

The RLWTF has not discharged to Outfall 051 since November 2010. LANL requests to re-permit the outfall so that the RLWTF can maintain the capability to discharge to the Outfall should the Mechanical Evaporator and/or Zero Liquid Discharge (ZLD) Solar Evaporation Tanks become unavailable due to *maintenance, malfunction, and/or there is an increase in treatment capacity* caused by changes in LANL scope/mission.

Id. at 5 of 9 (emphasis supplied); *see also* 6 through 14 of 14. Continuing:

A grab sample for the Form 2C constituents will be collected for Outfall 051 *when/if the RLWTF discharges effluent* through the outfall.

Request Ex. W, Outfall 051 fact sheet at 5 of 9 (emphasis supplied).

21. Other passages describe Outfall 051 as an ongoing source of discharge. The EPA Form 2C states that the average flow for Outfall 051 is 19,700 gallons per day. Request Ex. W, page 1 of 14. It also states that it is operated 260 days per year. *Id.* at 2 of 14. A schematic in the Renewal Application shows *three routes* for treated low-level waste effluent: Outfall 051, solar evaporation at TA-52, and mechanical evaporator at TA-50. Exhibit 15 to Petition.

22. The June 26, 2013 public Fact Sheet states that Outfall 051 has had no discharge since November 2010. Request Ex. NN at 5, 12. It also states that, “[the] facility includes the outfall in the application in case the evaporator becomes unavailable due to maintenance, malfunction, and/or capacity shortage.” *Id.* at 12. LANL describes effluent limits to be applied “if discharges occur” and “when discharges occur.” *Id.* at 13. The June 2013 Draft Permit lists Outfall 051 as having “intermittent” discharges. Exhibit

16 to Petition. The June 29, 2013 Public Notice states that the new permit will establish WET (whole effluent toxicity) tests for Outfall 051. Exhibit 17 to Petition.

23. In August 13, 2013 comments on the draft permit, having suggested that the evaporator may become unavailable due to maintenance or malfunction, LANS/DOE state that:

[b]ased on discharge records prior to November 2010, and with options of using the existing mechanical evaporator or new ZLD evaporation tanks, RLWTF would discharge to Outfall 051 only once or twice per week if evaporation is not an option.

Request Ex. OO, Enclosure at 3. Further, they state that “DOE/LANS request the opportunity to provide EPA with new data for Outfalls 051 and 05A055, *if* discharges through these outfalls are initiated during the life of the new permit.” *Id.* at 5 (emphasis supplied).

24. Thus, LANL represented that it needed Outfall 051 to meet the maintenance needs of the mechanical evaporator—clearly a claim that CCNS, with access only to public information, could not contest. The public process ended in August 2013. The Final Permit was issued on August 12, 2014. Therein, Outfall 051 is authorized to make “intermittent” discharges. Exhibit 18 to Petition.

25. No discharges have been made through Outfall 051 since the permit was renewed. Thus, none of the supposed maintenance needs of the mechanical evaporator appear to have arisen during seven years of its use, leaving it wholly unexplained what supposed maintenance requirements LANL had in mind when it claimed that such requirements would necessitate discharges and sought the repermitting of Outfall 051.

Since maintenance needs have not occasioned any discharge from Outfall 051 for seven years now, one must conclude that, whatever the maintenance needs of the mechanical evaporator might be, they do not require treated waste water to be directed to Outfall 051, and that LANL's references to supposed maintenance needs leading to discharges have no basis. In any case, the assertion that CCNS should have contested the permit in 2014 cannot be made in the light of LANL's representations in 2013-14 as to the future use of Outfall 051.

26. Significantly, counsel for Region 6 was unable to cite to any statutory or regulatory requirement that the participant in a permit proceeding below raise any issue he or she might want to present to this Board. Obviously, the need to terminate a permit may arise at any time during the projected life of the permit, and the rules allow an interested party to request termination at any such time. See 40 C.F.R. §§ 122.64(a), 124.5(a). During the permitting process LANL claimed that Outfall 051 was necessary, specifically, at times of maintenance or malfunction of the evaporation equipment. Since then, LANL has apparently decided that Outfall 051 is not necessary, because it has not resumed discharges from Outfall 051. As noted, LANL does not reveal to the public the timing or reasoning of its decisions concerning disposal of treated waste water; the public knows only that LANL now says that the discharges have stopped. But if LANL claimed during the permitting process that Outfall 051 would be needed by reason of maintenance or malfunction of the evaporation equipment, and LANL has since reversed itself and

determined that Outfall 051 will not be used, LANL's change of position constitutes part of the grounds of this appeal.¹

III. NPDES PERMITS MAY NOT ISSUE FOR “POSSIBLE” DISCHARGES.

27. Region 6 repeatedly asserts that the permit for Outfall 051 is supported by the “possibility” or “potential” of a discharge. EPA Br. at 6, 7, 13, 15, 16, 17, 18, 20. Two federal courts of appeals have held that the “possibility” of a discharge cannot support an NPDES permit, which can only regulate an actual discharge. *Waterkeeper Alliance, Inc. v. U.S. Environmental Protection Agency*, 399 F.3d 486 (2d Cir. 2005); *National Pork Producers Council v. U.S. Environmental Protection Agency*, 635 F.3d 738, 750 (5th Cir. 2011). Thus, “the Clean Water Act gives the EPA jurisdiction to regulate and control only actual discharges—not potential discharges, and certainly not point sources themselves.” *Waterkeeper*, 399 F.3d at 505. Where there is no discharge of pollutants, and no plan or intention so to discharge, EPA has no authority to issue a permit. 33 U.S.C. § 1342(a)(1).

28. EPA's brief repeatedly terms the discharge from Outfall 051 “infrequent, irregular, or rare.” EPA Br. at 6, 7, 15, 16, 18. These statements are simply false. The permittees are not willing to predict *any* discharges; the future discharges in question are *nonexistent*. No permit for this facility under the NPDES is supportable.

29. Region 6 asserts that the other cases CCNS cited do not apply here. EPA Br. at 19. However, *National Wildlife Federation v. Gorsuch*, 693 F.2d 156 (D.C. Cir.

¹ The only provision counsel are aware of that would require raising the issue below in the permit proceeding context is 40 CFR § 124.19(a)(4)(B)(ii) – which does not apply to this termination proceeding.

1982), holds that “to require NPDES permits, five elements must be present (1) a pollutant must be (2) added (3) to navigable waters (4) from (5) a point source.” *Id.* at 165. *National Wildlife Federation v. Consumers Power Co.*, 862 F.2d 580 (D.C. Cir. 1988), restates the same principles. *Id.* at 583. Outfall 051 lacks those essential elements. Further, *In re Lowell Vos*, 2009 EPA ALJ Lexis 8 (2009), relates that “EPA agrees that it cannot require one to obtain an NPDES permit on the basis of a mere potential to discharge.” *Id.* at *63. Region 6 here erroneously seeks to justify an NPDES permit based only on a “potential” discharge. EPA Br. at 6, 7, 13, 15, 16, 17, 18, 20.

30. Fundamentally, Region 6’s arguments that 40 C.F.R. § 122.64 bars termination of the NPDES permit for Outfall 051—because (a) there has not been a sufficient “change” in the facility, and (b) the changes do not “require” the shutoff of discharges—ignore the statutory limitations upon NPDES permits. Congress has declared that an NPDES permit is not valid without a discharge of pollutants. 33 U.S.C. § 1342(a)(1). An agency regulation, such as 40 C.F.R. § 122.64, cannot support an NPDES permit, where there is only the “potential” of a discharge, any more than the regulations held invalid in *Waterkeeper* or *National Pork Producers* could sustain an NPDES permit, where there was only a “potential” discharge. The Permit must be terminated as to Outfall 051.

31. The additional argument that EPA must issue a permit to a non-discharging facility, because a future emergency might necessitate a discharge also ignores the legal limitations that Congress placed upon EPA’s authority. EPA Br. at 16. Moreover, the hypothetical situation that Region 6 imagines—where the expectation of an unscheduled

discharge is high enough that the operator desires a permit, but the prospect somehow cannot be termed a planned discharge—is remote from the present case. EPA Br. at 16. LANL has never claimed that there has been a sudden and unexpected need to discharge from Outfall 051. CCNS has demonstrated that the RLWTF has ample waste water storage capacity to manage a long suspension of disposal—and Region 6 did not dispute or even address the point. *Compare* CCNS Submission at 8 note 5 *and, generally,* EPA Br. The regulations contemplate the filing of a permit application only 180 days in advance of a proposed new discharge, and neither EPA nor LANL claims that this would be an intolerable delay. 40 C.F.R. § 122.21(c). Indeed, when pressed during the permitting process to adopt criteria for pollutants released from Outfall 051, EPA said that there would be plenty of time to do so when the need to discharge arose. Request Ex. TT. The Board cannot assume that an unforeseen emergency will require a permit on shorter notice than EPA can accommodate.²

IV. EPA MAY NOT IGNORE THE LAW WHEN AN APPLICANT “REQUESTS” A PERMIT.

32. Region 6 also argues that, although EPA cannot lawfully *require* LANL to obtain a permit for Outfall 051, EPA can lawfully grant such a permit when LANL so *requests* “voluntarily.” EPA Br. at 17-18, 20. Of course, any permit is “requested” by the applicant, but a request, in itself, has no legal significance and does not allow EPA to disregard the legal limits of its authority. Indeed, this argument has already been rejected. The Second Circuit in *Waterkeeper* ruled, applying *Chevron USA, Inc. v.*

² EPA Region 6’s statement that issuance of an NPDES permit for a facility that does not “routinely discharge” is “not unusual” (EPA Br. 16-17) is unsupported by any facts in the record.

NRDC, Inc., 467 U.S. 837 (1984), that EPA has *no discretion* to regulate potential discharges: “Congress has ‘directly spoken to the precise question at issue’ and ‘the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.’” *Id.* at 506.

33. Region 6 even tells the Board to ignore the exemption from the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), conferred on the RLWTF by an NPDES permit. EPA Br. at 21. The RLWTF is a complex hazardous waste treatment and storage facility that would normally be regulated by a RCRA permit under a law designed specifically to control hazardous waste handling, treatment, storage and disposal practices. But Region 6 proposes to continue to exempt the RLWTF from all hazardous waste regulation, by including the dormant Outfall 051 in an NPDES permit, simply because *LANL has requested* such a permit, even though the only lawful basis for an NPDES permit is the discharge of regulated pollutants to the waters of the United States, and the RLWTF has zero liquid discharge. Such a proposition has no basis in law and results in a consequence Congress never intended when it enacted the RCRA: that a facility such as the non-discharging RLWTF, a facility engaged in hazardous waste handling, storage and disposal, would avoid RCRA and instead be regulated only as to discharges of pollutants under the Clean Water Act, a law that was not intended to deal with hazardous waste management facilities. Such an outcome frustrates the purposes of these critical federal environmental laws.

V. RESPONSES TO THE BOARD'S QUESTIONS:

1. The applicability of 40 C.F.R. § 122.64(a)(4) to the current case, prior determinations by EPA on the applicability of this provision, and any regulatory history or EPA guidance on the scope or meaning of this provision.

Response: See Section I above, ¶¶ 4 – 10.

2. The information in the administrative record relating to the nature and extent of any discharges from Outfall 051 when EPA publicly noticed the draft NPDES permit No. 0028355 in June 2013 and when EPA issued a final permit decision in August 2014; and how that information compares to what is known now about the nature and extent of any discharges from Outfall 051.

Response: See Sections I-II above, ¶¶ 10-25.

3. Whether the permittee has constructed and made operational the two new Concrete Evaporation Tanks referenced at page 7 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet (Attachment No. 051 to the February 2012 NPDES Permit Re-Application).

Response: See Permittees' submission (Oct. 16, 2017).

4. Whether these "Concrete Evaporation Tanks" are the same as the "Solar Evaporation Tanks" referenced at page 5 of the 2012 NPDES Permit Re-Application Outfall Fact Sheet (Attachment No. 051 to the February 2012 NPDES Permit Re-Application).

Response: See Permittees' submission (Oct. 16, 2017).

5. Whether anyone commented on the draft NPDES Permit No. 0028355 publicly noticed in June 2013 about inclusion of Outfall 051 (if so, the parties should include copies of those comments and any EPA response to those comments as exhibits to their briefs.).

Response: See EPA Region 6 response at 23 (Oct. 18, 2017).

VI. CONCLUSION AND REQUESTED RELIEF.

WHEREFORE, CCNS requests that the EAB take up this matter, reverse the Region 6 decision denying CCNS's Request, and direct Region 6 to initiate a proceeding to terminate NPDES Permit NM 0028355 with respect to Outfall 051 at LANL.

DATED at Santa Fe, New Mexico, this 7th day of November, 2017.

Respectfully submitted:



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Exhibit List and Exhibits attached hereto following certifications

CERTIFICATION OF IDENTICAL PAPER FILING

I certify that the enclosed *Concerned Citizens for Nuclear Safety Reply Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b)* in the matter of Los Alamos National Security, LLC, and the Department of Energy, NPDES Appeal No. 17-05, and exhibits thereto are identical copies of those filed electronically in this matter by below signed counsel for Concerned Citizens for Nuclear Safety with the Environmental Appeals Board on November 3, 2017.

Dated at Santa Fe, New Mexico this 3d day of November 2017



Jonathan M. Block

CERTIFICATE OF SERVICE

On this 3rd day of November 2017, the undersigned caused the *Concerned Citizens for Nuclear Safety Reply Submission Pursuant to 40 C.F.R. §§ 124.2 and 124.5(b)* with attached exhibit list and exhibits to be sent by electronic means where an email address is indicated and by United States Postal Service, pre-paid First Class mail, to the below listed persons.



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