



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

In re:
Wulf Cattle Depot
NPDES Permit No. SD-0034606
NPDES Appeal No. 21-01

THIRD ORDER GRANTING EXTENSION OF STAY

This matter involves the appeal of a National Pollutant Discharge Elimination System ("NPDES") permit issued by the U.S. Environmental Protection Agency Region 8 ("Region") to petitioner Wulf Cattle Depot for a Concentrated Animal Feeding Operation facility located in the town of McLaughlin, South Dakota, within the exterior boundary of the Standing Rock Sioux Reservation. Wulf Cattle Depot filed its notice of appeal on February 19, 2021, together with an unopposed motion for extension of time to file a brief in support. See Wulf Cattle Depot, Notice of Appeal (Feb. 19, 2021). The Board granted Wulf Cattle Depot's motion for an extension of time. Order Granting Extension of Time for Filing Brief in Support of Petition for Review (Feb. 23, 2021) (granting extension through March 31, 2021).

The Region subsequently filed an unopposed motion to stay the proceedings to allow the parties and the Standing Rock Sioux Tribe ("Tribe") to discuss potential resolution of the appeal, followed by three additional status reports, each seeking a further stay of the proceedings. See EPA Region 8, Unopposed Motion to Stay Proceedings (Mar. 23, 2021); EPA Region 8, Status Report and Unopposed Motion for Further Stay of Proceedings (May 17, 2021); EPA Region 8, Second Status Report and Motion for Further Stay of Proceedings (June 25, 2021) ("Second

Status Report”); EPA Region 8, Third Status Report and Unopposed Motion for Further Stay of Proceedings (July 12, 2021) (“Third Status Report”). The Board has granted each of the Region’s requests for a further stay of proceedings. *See* Order Staying Proceedings for Sixty Days (Mar. 24, 2021) (staying proceedings until May 24, 2021); Order Granting Extension of Stay (May 19, 2021) (staying proceedings until July 1, 2021); Order Granting Further Extension of Stay (June 28, 2021) (staying proceedings until July 15, 2021).

In its Second Status Report, the Region reported that, based on discussions with Wulf Cattle Depot and the Tribe, it had been considering whether to withdraw four permit conditions and issue new draft conditions for public notice and comment—a potential course of action that the Region refers to as the “permit withdrawal option.” Second Status Report at 2. The Region also reported that it had been in communication with the Tribe about the permit withdrawal option and had (virtually) presented information to the Tribe about the option at a Tribal Council meeting. *Id.* at 3. Subsequently, counsel for the Tribe informed the Region that the Tribe opposed the permit withdrawal option. *Id.* at 4.

In its Third (and most recent) Status Report, the Region reports that after filing the Second Status Report, it participated in an additional government-to-government meeting with the Tribe on July 6, 2021. Third Status Report at 3. According to the Region, “[d]uring this tribal consultation meeting, the Region heard a variety of opinions from the Tribal Council, but nothing to suggest that the Council no longer opposes modifying the challenged permit.” *Id.* In addition, the Region reports that, at that meeting, the Tribe “indicated that it wished to pursue dispute resolution for this matter.” *Id.* at 4. As a result, the acting Director of the Region’s Water Division agreed to refer the question of whether to modify the challenged permit to the acting Regional Administrator for resolution in accordance with the process established in Section IV.E of the *EPA Region 8 Policy for Environmental Protection in Indian Country*

(“Procedures for Elevation of Issues and Dispute Resolution”).<sup>1</sup> *Id.* at 5. The Region represents that, pursuant to those procedures, the acting Regional Administrator “will consult with ‘the tribal chair, the Director of the American Indian Environmental Office (AEIO), and the Headquarters program office, as appropriate’ before making a final decision.” *Id.* at 5 (quoting *EPA Region 8 Policy for Environmental Protection in Indian Country*, § IV.E, at 6). The Region further represents that “[t]his additional time will allow the Region to conduct the activities outlined above, thereby assuring that the Region conforms to the principles and procedures in the *Region 8 Policy*, as well as allowing the Region to continue to advance the policies established in the 2011 *EPA Policy on Consultation and Coordination with Indian Tribes*.” *Id.* at 5-6.

This matter is currently stayed until July 15, 2021. The Region now moves for a further stay of the proceedings for an additional thirty-two days after the current stay ends—that is, until August 16, 2021—in order to allow time to conduct the dispute resolution process and obtain a decision from the acting Regional Administrator in accordance with the Region 8 Policy. *Id.* at 6. The Region represents that it contacted counsel for Wulf Cattle Depot to ascertain whether Petitioner would concur with the motion and that Wulf Cattle Depot “indicated that while it does not oppose this motion, it believes that EPA has already satisfied its obligations to the Tribe.” *Id.*

Accordingly, based on the Region’s representations in its Third Status Report, the Board **GRANTS** the Region’s motion and further stays this matter until **Monday, August 16, 2021**. On or before **Tuesday, August 10, 2021**, the Region shall file a status report with the Board

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<sup>1</sup> The Region 8 Policy for Environmental Protection in Indian Country is available at: [https://www.epa.gov/sites/production/files/2018-04/documents/1996\\_r8\\_indian\\_country\\_environmental\\_protection\\_policy.pdf](https://www.epa.gov/sites/production/files/2018-04/documents/1996_r8_indian_country_environmental_protection_policy.pdf).

addressing the status of the dispute resolution process and the status of any ongoing discussions with Wulf Cattle Depot and the Tribe concerning efforts to resolve the appeal, and proposing, if appropriate, a briefing schedule for the appeal. If the parties seek a further stay of proceedings beyond August 16, 2021, the Region shall also file a motion requesting a further stay of the proceedings, including the basis for that motion and the length of the stay being sought. *See* 40 C.F.R. § 124.19(f)(6) & (n).

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: July 14, 2021

By:   
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Aaron P. Avila  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing **THIRD ORDER GRANTING EXTENSION OF STAY** in the matter of *Wulf Cattle Depot*, NPDES Appeal No. 21-01, were sent to the following persons by electronic mail:

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Dated: Jul 14, 2021

*Emilio Cortes*

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Emilio Cortes  
Clerk of the Board