



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

ORDER GRANTING FURTHER EXTENSION OF STAY

On May 19, 2021, the Environmental Appeals Board ("Board") issued an order staying this matter until July 1, 2021, to provide the U.S. Environmental Protection Agency Region 8 (the "Region") with additional time to discuss resolution of this matter with Petitioner, Wulf Cattle Depot, and the Standing Rock Sioux Tribe (the "Tribe"). Order Granting Extension of Stay (May 10, 2021). The order directed the Region to file a status report on or before June 24, 2021, addressing the status of its discussions with Wulf Cattle Depot and the Tribe, and to the extent that the parties were interested in a stay of proceedings beyond July 1, 2021, to file a motion requesting a further stay. Id. at 2.

In its status report the Region explains that it "has been considering whether to withdraw four permit conditions and issue new draft conditions for public notice and comment" and that it met with Tribal leadership and Council and "described the permit withdrawal option, reviewed the draft permit conditions, and explained the Region's reasons for considering a permit modification." Second Status Report and Motion for Further Stay of Proceedings at 2-4. The Region also explains that during this period it engaged in discussions with Petitioner and

represents that Petitioner “expressed interest in the permit withdrawal option” and “has no objections to the draft permit conditions and draft statement of basis.” *Id.* at 4.

The Region also represents that on June 24, 2021, it learned that the Tribe opposes the permit modifications being considered in the permit withdrawal option, that the Region “has not had adequate opportunity to discuss this input with the Tribe, consider it and use it to inform [its] decision making,” and that it “has already reached out to the Tribal leadership to request a meeting to discuss the Tribe’s input and to seek greater detail concerning the Tribe’s opposition to the permit modification.” *Id.* The Region requests a further stay of 14 days to allow “time to hold this discussion, consider any additional input the Tribe may provide, and incorporate that information into the Region’s final decision on a path forward.” *Id.* In support of its motion, the Region claims that neither Petitioner nor the Tribe will be prejudiced by a further stay. *Id.* at 5. Petitioner, the Region claims, will not be prejudiced “because the contested permit is already stayed during the pendency of the appeal” and the Tribe will not be prejudiced “because the additional time will allow [the Tribe] to provide additional input to the Region” and the time to file a notice of appearance before the Board, if the Tribe so chooses, is already stayed. *Id.* Finally, the Region represents that it “contacted Petitioner’s attorney to ascertain whether Petitioner would concur with or oppose the motion,” but that “[d]ue to the lateness of the request, Petitioner’s counsel was unable to provide Petitioner’s position with regards to this motion.” *Id.*


Accordingly, based on the representations in the Region’s motion, the Board **GRANTS** the motion and this matter is now stayed until **Thursday, July 15, 2021**. On or before **Monday, July 12, 2021**, the Region shall file a status report addressing the status of its discussions with Wulf Cattle Depot and Tribe, proposing (if appropriate) a briefing schedule, and to the extent that the parties seek a stay of proceedings beyond July 15, 2021, a motion requesting a further

stay. The motion must specify the length of, and explain the basis for, such a further stay. *See* 40 C.F.R. § 124.19(f)(6) & (n).

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: Jun 28, 2021

By:   
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Aaron P. Avila  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

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

*For Petitioner*

Scott G. Knudson  
Andrew S. Dossdall  
Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South Eight Street  
Minneapolis, MN 55402  
sknudson@taftlaw.com  
adosdall@taftlaw.com

*For Region 8*

Everett Volk  
Office of Regional Counsel  
Mail Code 8ORC-LC-M  
1595 Wynkoop Street  
Denver, Colorado 80202  
volk.everett@epa.gov

Alec Mullee  
OGC-Water Law Office  
1200 Pennsylvania Ave. NW  
MC-2355A  
Washington, DC 20460  
mullee.alec@epa.gov

Dated: Jun 28, 2021

*Emilio Cortes*

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Emilio Cortes  
Clerk of the Board