

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

)	
In re:)	
)	NPDES Appeal No. 20-02
Incorporated County of Los Alamos,)	
New Mexico)	
)	
)	

SCHEDULING ORDER

On January 17, 2020, the Incorporated County of Los Alamos, New Mexico (“County”) filed a petition for review with the Environmental Appeals Board (“Board”) under 40 C.F.R. § 124.19. *See* Petition for Review (“Petition”). The Petition seeks Board review of a December 16, 2019 designation decision by U.S. EPA Region 6 (“Region”) pursuant to section 402(p)(2)(E) of the Clean Water Act (“CWA”), 33 U.S.C. § 1342(p)(2)(E), and 40 C.F.R. § 122.26(a)(9)(i)(D), that stormwater discharges from certain small municipal separate storm sewer systems located in the Los Alamos Cluster and on the Los Alamos National Laboratory property are contributing to violations of New Mexico’s water quality standards and therefore require NPDES permits. *See* “Designation Decision and Record of Decision in Response to Petition by Amigos Bravos for a Determination that Stormwater Discharges in Los Alamos County Contribute to Water Quality Standards Violations and Require Clean Air Act Permits” (“Designation Decision”). This authority is referred to as the EPA’s “residual designation authority.”

By Motion filed with the Board on February 14, 2020, the Region seeks dismissal of the Petition. Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, Motion for Extension

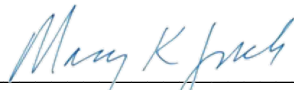
of Time (Region’s Motion”). According to the Region, the Designation Decision is “a discrete decision that falls outside the purview of the Board’s jurisdiction under the governing regulations.” *Id.* at 5-6. In the alternative, the Region requests an additional 30 days from the Board’s ruling on the Motion to file a response on the merits of the Petition. *Id.* at 6-7. The Region states that the Petitioner objects to the Motion.

The Board will defer any determination on the Region’s request for dismissal of the Petition until the Board receives and considers a response to the Motion from the County addressing the Region’s jurisdictional argument. Any response from the County must be filed no later than Thursday, March 5, 2020. Any reply by the Region must be filed on or before Monday, March 16, 2020. The deadline for the Region’s substantive response to the Petition is stayed until further order by the Board.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: February 18, 2020

By: 

Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Scheduling Order in the matter of Incorporated County of Los Alamos, New Mexico, NPDES Appeal No. 20-02, were sent to the following persons in the manner indicated:

By First Class Mail:

J. Alvin Leaphart, County Attorney
Kevin J. Powers, Assistant County Attorney
Kathryn S. Thwaites, Deputy County Attorney
Incorporated County of Los Alamos, New Mexico
1000 Central Ave., Suite 340
Los Alamos, NM 87544

By EPA Pouch Mail:

Renea Ryland, Associate Regional Counsel
U.S. Environmental Protection Agency
Region 6
1201 Elm Street
Dallas, TX 75270

Dated: Feb 18 2020



Eurika Durr
Clerk of the Board