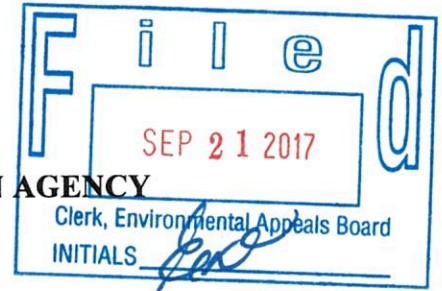


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)	
)	
Los Alamos National Security, LLC and the Department of Energy)	NPDES Appeal No. 17-05
)	
Permit No. NM0028355)	
)	

ORDER FOR ADDITIONAL BRIEFING

On September 14, 2017, Concerned Citizens for Nuclear Safety (“Concerned Citizens”) filed an informal appeal with the Environmental Appeals Board (“Board”) under 40 C.F.R. § 124.5(b). The informal appeal seeks Board review of the U.S. Environmental Protection Agency Region 6’s (“Region”) denial of Concerned Citizen’s request that the Region terminate as to one outfall (Outfall 051) an NPDES permit issued to Los Alamos National Laboratory, LLC and the Department of Energy as co-permittees of the Los Alamos National Laboratory facility in Los Alamos, New Mexico. Letter from Jonathan Block, Counsel for Concerned Citizens for Nuclear Safety, to the Environmental Appeals Board (Sept. 14, 2017) & Att. 1, *Concerned Citizens For Nuclear Safety Submission Pursuant To 40 C.F.R. §§ 124.2 and 124.5* (“Informal Appeal”).

The Region denied Concerned Citizens termination request on the grounds that it failed to demonstrate termination was appropriate under the applicable regulations. See Letter from William K. Honker, Director, Water Division, U.S. EPA Region 6, to Lindsay A. Lovejoy, Jr. and Eric D. Jantz, Counsel for Concerned Citizens (Aug. 16, 2017) (“Honker Letter”) (Exh. 12 to Informal Appeal). In particular, the Honker Letter states that under 40 C.F.R. § 124.5(a), permits

may only be terminated for the reasons specified in 40 C.F.R. § 122.64. Honker Letter at 2; *see* 40 C.F.R. § 124.5(a). Section 122.64 includes the following as a cause for termination:

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

40 C.F.R. § 122.64(a)(4). The Honker Letter stated, among other things, that “EPA is not aware of a change in any condition (*e.g.*, facility closure or termination of the discharge by connection to a POTW) that would warrant termination of permit coverage for Outfall 051 pursuant to § 122.64(a)(4).” Honker Letter at 2.

By letter dated September 18, 2017, the Clerk of the Board requested that the Region file a response to the Informal Petition no later than September 28, 2017. *See* Letter from Eurika Durr, Clerk of the Board, to William K. Honker, Acting Director, Water Quality Protection Division, U.S. EPA Region 6 (“Clerk’s Letter”). The Clerk’s Letter stated further that the response must include relevant portions of the administrative record and a certified index to the entire administrative record and must reflect consultation with the U.S. EPA’s Office of General Counsel and the Office of Water. Clerk’s Letter at 2. The Board hereby incorporates the content of that letter and the September 28, 2017 response deadline contained therein. In addition, if the co-permittees, Los Alamos National Laboratory, LLC and the Department of Energy wish to file a response to the Informal Appeal, they must do so no later than September 28, 2017. If Concerned Citizens wishes to file a reply to the Region’s and the co-permittees’ responses, they must do so no later than October 5, 2017.

Further, upon consideration, the Board has determined that discussion of several issues in the parties’ responses will be of assistance in the Board’s deliberations. While not intended as an

exhaustive list, the Board requests that the parties include in their briefs responses on the following five topics:

- the applicability of 40 C.F.R. § 122.64(a)(4) to this situation, 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;
- 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;
- 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);
- 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); and
- 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).

Please also note that the Board’s request that the parties address these topics does not reflect any determination by the Board on any of the issues raised by the Petition.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: SEP 21 2017

By: Mary Beth Ward
Mary Beth Ward
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order for Additional Briefing* in the matter of Los Alamos National Security, LLC and the Department of Energy, NPDES Appeal No. 17-05, were sent to the following persons in the manner indicated:

By First Class Mail:

Jonathan Block, Counsel
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505

Los Alamos National Security, LLC
Los Alamos National Laboratory
P.O. Box 1663 (MS K491)
Los Alamos, NM 87544

U.S. Department of Energy
Los Alamos Area Office, A316
3747 West Jemez Road
Los Alamos, NM 87544

Charles F. McMillan, Director
Los Alamos National Laboratory
P.O. Box 1663 (MS K499)
Los Alamos, NM 87545

Kimberly D. Lebak, Manager
U.S. DOE Los Alamos Field Office
3747 West Jemez Road (MS A316)
Los Alamos, NM 87544

Butch Tongate, Secretary
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Lindsay A. Lovejoy, Jr.
3600 Cerrillos Rd., Unit 1001A
Santa Fe, NM 87507

By EPA Pouch Mail:

Jim Payne, Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Renea Ryland
Office of Regional Counsel, 6RC
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Stacey Dwyer, Associate Director
Water Quality Protection Division, 6WQ
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: SEP 21 2017



Annette Duncan
Administrative Specialist