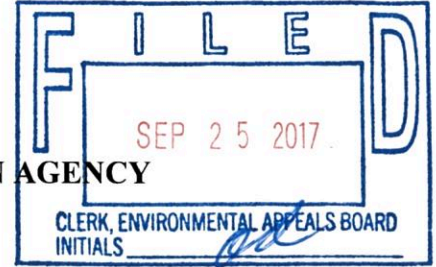


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)

Los Alamos National Security, LLC, and)
the U.S. Department of Energy)

Permit No. NM0028355)
_____)

NPDES Appeal No. 17-05

ORDER EXTENDING TIME 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) a National Pollutant Discharge Elimination System (“NPDES”) permit issued to Los Alamos National Security, LLC, and the U.S. Department of Energy as co-permittees for the Los Alamos National Laboratory facility in New Mexico. *See* 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(b)* (“Informal Appeal”).

By order dated September 21, 2017, the Board set a deadline of September 28, 2017, for the Region and co-permittees, Los Alamos National Security, LLC, and the U.S. Department of Energy, to file responses to the Informal Appeal. *See* Order for Additional Briefing (Sept. 21, 2017) (“Order”). Concerned Citizens would then have until October 5, 2017, to file a reply. *Id.*

at 2. In the Order, the Board also requested that the parties include in their briefs a discussion of several issues that will be of assistance to the Board in its deliberations.

On September 22, 2017, the Region filed an Unopposed Motion for Extension of Time (“Motion”) seeking an additional twenty days, or until October 18, 2017, to file its response. In support of the Motion, the Region states that “the issues raised by [the Informal Appeal] concern matters central to the agency’s implementation nationally of the [NPDES] program and therefore require close coordination with the EPA Office of Water and the EPA Office of General Counsel.” Motion at 1.

The Region states further that it “needs additional time to properly research and adequately discuss these issues, particularly in light of the potential for delay due to possible deployment or reassignment of EPA staff to Hurricane response efforts.” *Id.* at 2. Lastly, the Region states that counsel for Concerned Citizens does not oppose the Motion so long as the Board extends the deadline to file a reply for twenty days from the Region’s response, or until November 7, 2017.

For good cause shown, the Motion is granted. The deadline for the Region and co-permittees to file a response is extended to **October 18, 2017**. Concerned Citizens will then have until **November 7, 2017**, to file a reply.¹

¹ Section 124.5(b) provides that the denial of a permit modification request “may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts.” This section states further that “[t]he appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it.” 40 C.F.R. § 124.5(b). The Board’s September 21, 2017 Order for Additional Briefing as well as this Order Extending Time for Additional Briefing constitute sufficient “action” necessary to

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 9/25/2017

By: Mary Beth Ward
Mary Beth Ward
Environmental Appeals Judge

keep this matter alive beyond the sixtieth day. *See In re Waste Techs. Indus.*, 5 E.A.D. 646, 655 n.13 (EAB 1995) (order for supplemental briefing is sufficient to keep appeal alive beyond sixty-day period specified in § 124.5(b)).

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Extending Time for Additional Briefing* in the matter of Los Alamos National Security, LLC, and the U.S. 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 25 2017



Annette Duncan
Administrative Specialist