

F I L E D

Mar 24, 2021

Clerk, Environmental Appeals Board
INITIALS *[Signature]*

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

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

ORDER STAYING PROCEEDINGS FOR SIXTY DAYS

On March 23, 2021, the U.S. Environmental Protection Agency, Region 8 (“Region”) filed an unopposed motion seeking a 60-day stay of proceedings in the above-captioned matter. Previously, on February 23, 2021, the Environmental Appeals Board (“EAB”) issued an order granting Petitioner, Wulf Cattle Depot, a 30-day extension of time to submit a brief in support of its Petition for Review and adjusting the other due dates for submissions in this proceeding. The current deadline for Petitioner to file its brief in support of the Petition is March 31, 2021. The deadline for the Region to file its response to the Petition (along with a certified index and relevant portions of the administrative record) and for the States or Tribal authorities where the permitted facility is located to (if they so choose) file a notice of appearance and a response to the Petition is April 30, 2021. Order Granting Extension of Time for Filing Brief in Support of Petition for Review 2 (Feb. 23, 2021).

The Region requests the stay “to allow the parties and the Standing Rock Sioux Tribe to discuss resolution of the appeal.” Unopposed Motion to Stay Proceedings (Mar. 23, 2021) (“Region’s Mot.”). The Region explains that the facility is located “within the exterior boundary of the Standing Rock Sioux Reservation”; that the Tribe provided several comments on the draft

permit; that upon receipt of notice of the appeal “the Region contacted the Tribe to inform it of the appeal and to initiate consultation on a government-to-government basis”; that “the Region and the Tribal leadership have begun consultation, and the Tribe has indicated a strong interest in the permit appeal.” *Id.* at 1-2. The Region adds that it discussed the permit appeal with counsel for Petitioner, that it “believes it may be possible to reach a mutually agreeable resolution of the permit appeal before briefing or oral argument,” and that it consulted with the Office of General Counsel and the Office of Water. *Id.* at 2. Finally, the Region posits that “Petitioner will not be prejudiced by a stay because the contested permit conditions are already stayed during the pendency of the appeal” and that “[t]hrough not yet a party, the Tribe will not be prejudiced by a stay because the time for it to file a notice of appearance” would also be stayed. *Id.*

Upon consideration of the unopposed motion, the Board concludes that a stay of proceedings for sixty days is reasonable in this case to allow time for the Region, Petitioner, and the Tribe to discuss possible paths for resolution. 40 C.F.R. § 124.19(o). Accordingly, the Board grants the Region’s motion. This matter is now stayed for sixty days until **Monday, May 24, 2021**. In addition, on or before **Monday, May 17, 2021**, the Region shall file a status report addressing the status of the government-to-government consultations and discussions, proposing (if appropriate) a briefing schedule, and to the extent that the parties seek a stay of proceedings beyond May 24, 2021, a motion requesting a further stay. The motion must specify the length of, and explain the basis for, such a further stay.

So ordered

Dated: Mar 24, 2021

ENVIRONMENTAL APPEALS BOARD

By: 

Kathie A. Stein

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Staying Proceedings for Sixty Days* in the matter of Wulf Cattle Depot, NPDES Appeal No. 21-01, were sent to the following persons in the manner indicated.

By Email:

For Petitioner

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

For EPA

Everett Volk
Senior Assistant Regional Counsel
Environmental Protection Agency Region 8
1595 Wynkoop St.
Mail Code: 8ORC-LC-M
Denver, CO 80202
volk.everett@epa.gov

Alec Mullee
Attorney-Advisor
Water Law Office, Office of General Counsel
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code: 2355A
Washington, DC 20460
mullee.alec@epa.gov

Dated: Mar 24, 2021



Eurika Durr
Clerk of the Board