

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

In re:)	
)	
)	NPDES APPEAL No. 14-04
Lee Ranch Coal Company,)	
El Segundo Mine)	
)	
NPDES Permit No. NM0030996)	
)	

**RESPONSE BY PETITIONER LEE RANCH COAL COMPANY
TO EPA REGION 6'S MOTION TO STAY**

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Lee Ranch Coal Company (“LRCC”) hereby responds to the Motion to Stay filed by the United States Environmental Protection Agency (“EPA”) Region 6 (the “Region”) on July 15, 2015 (the “Motion”). Pursuant to its Motion made nearly on the eve of oral argument scheduled for July 21, 2015, the Region unilaterally requests that the EPA Environmental Appeals Board (the “Board”) stay this matter. The Region requests an open ended stay until the Board decides how to proceed after the Region files a status report on August 28, 2015. As further explained below, LRCC objects to the Region’s Motion as the subject petition has been pending for over eight (8) months and the Region has had ample time to prepare for oral argument. Nonetheless, LRCC will not object to continuing oral argument for 30 days to provide EPA’s Office of Water and EPA’s Office of General Counsel (collectively, “EPA’s Headquarters”) with additional time to come up to speed and comply with the Board’s Order Scheduling Oral Argument of June 24, 2015. During such time, LRCC will continue its efforts to resolve this matter through settlement as suggested in the Region’s Motion. **LRCC respectfully requests that the Board expedite its ruling on the Motion by tomorrow, July 17, 2015, in light of its counsel’s flight reservations on Sunday, July 19, 2015, to travel from Los Angeles, California to Washington, D.C. for oral argument.**

Any need for additional time for the Region is self-inflicted. LRCC timely complied with its obligations to file the subject petition within 30 days of the Permit’s¹ issuance and filed its Reply and Opposition to the Region’s Response and Motion to Dismiss in merely 15 days. Although LRCC is appreciative of the burden placed on the Region’s limited resources, in light of the previous stay of this matter, the Region had six (6) months to file its response to the subject petition and has had nearly a month to prepare for oral argument, which focuses on the Region’s own Response and Motion to Dismiss. The timing of the Region’s Motion is all the more objectionable since on July 2, 2015, the Region first asked whether LRCC would agree to jointly request a continuation of the date of oral argument, which LRCC declined to do. Yet, the Region

¹ National Pollutant Discharge Elimination System (“NPDES”) permit (No. NM0030996) (the “Permit”).

waited another two weeks, until July 15, 2015, to inform LRCC of its Motion and to file it with the Board.

LRCC has worked tirelessly to try to resolve this matter, but the Region has managed the timing of settlement negotiations at the same slow pace that it has taken with the rest of these proceedings. For instance, without revealing the confidences of the communications, on May 27, 2015, counsel and representatives for LRCC flew to Dallas, Texas to meet with the Region in an attempt to resolve the matter. Thereafter, on June 2, 2015, LRCC promptly made a proposal which has since languished at the Region. LRCC remains interested in reaching a mutual resolution if possible, but needless to say has lost confidence in the Region's willingness to do the same and has been unfairly burdened by the delays and significant costs incurred in the process.

Given the length of time that LRCC's petition has been pending, the previous six month stay, and the unsuccessful attempts to date to resolve this matter without the intervention of the Board, LRCC opposes the open ended stay requested by the Region. LRCC will not object to continuing the date of oral argument by 30 days to provide EPA Headquarters an opportunity to consider this matter in light of the Board's Order Scheduling Oral Argument expecting that the views represented by the Region will reflect EPA's views, not just those of the Region, regarding the NPDES permitting, withdrawal and termination processes. Such amount of time is generous considering that LRCC only had 30 days in the first place to file the subject petition, it has been over two months since the Region filed its Response and Motion to Dismiss, and nearly a month since the Board ordered oral argument.

Date: July 16, 2015

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CERTIFICATE OF SERVICE

I, Peter R. Duchesneau, hereby certify that on this 16th of July, 2015, I served a copy of the foregoing Response By Petitioner Lee Ranch Coal Company to EPA Region 6's Motion to Stay on the parties identified below by email.

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