United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

FAX FORM

Number of Pages, including cover sheet: 16

To: Clerk of the Board	From: Renea Ryland
Phone: ~~(214) 665-2130~~	Phone: (214) 665-2130
Fax: (202) 233-0121	Fax: (214) 665-2182

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

In re: Los Alamos National Laboratory	NPDES Appeal No. NPDES 09-05
NPDES Permit No. NM0030759	

03/05/2010

JOINT STATUS REPORT AND SEVENTH MOTION FOR EXTENSION OF DEADLINE BY WHICH REGION 6 AND LANS/DOE MUST FILE THEIR RESPONSES TO PETITION FOR REVIEW

The United States Environmental Protection Agency, Region 6 ("the Region"), Los Alamos National Security, LLC and the U.S. Department of Energy (LANS/DOE) and the Western Environmental Law Center (WELC) respectfully file this Status Report concerning progress in settlement discussions regarding the above-referenced matter. In addition, the parties jointly and respectfully request that the Board extend the deadline by which the Region and LANS/DOE must file their respective responses to the Petition for Review filed by WELC for an additional week, from Friday, March 5, 2010 until Friday, March 12, 2010 in order to allow the parties time to finalize an agreement in principle to settle this matter. In support of this request, the parties states as follows:

1. The Region issued NPDES Permit No. NM0030759 ("the Permit") for the Los Alamos National Laboratory (LANL) facility located at Los Alamos, New Mexico on February 13, 2009. Los Alamos National Security, LLC (LANS) and the U.S. Department of Energy (DOE) are Co-Permittees under the Permit, which is an individual

permit for storm water discharges associated with industrial activities from specified Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) at the facility.

2. The facility covers approximately 40 square miles and is situated on the Pajarito Plateau in Northern New Mexico, which consists of a series of finger-like mesas separated by deep west-to-east oriented canyons cut by predominantly ephemeral and intermittent streams. The majority of the approximately 400 SWMUs and AOCs covered by the permit are remotely located and not associated with current industrial activities.

3. On March 13, 2009, the Western Environmental Law Center on behalf of Amigos Bravos, Concerned Citizens for Nuclear Safety, Embudo Valley Environmental Monitoring Group, Honor Our Pueblo Existence, New Mexico Acequia Association, Partnership for Earth Spirituality, J. Gilbert Sanchez, Kathy Sanchez, and Tewa Women United ("Petitioners") filed with the Board a timely Petition for Review of the Permit and Request for Oral Argument. On April 13, 2009, Co-Permittees LANS/DOE filed a Motion to Intervene and Request for Leave to Respond to the Petition for Review.

4. The Petition for Review raises complex issues, including whether compliance schedules are permissible under the Clean Water Act and under what circumstances, and what is required to ensure compliance with water quality standards. The issues are further complicated by the unique nature of the LANL facility and its industrial discharges.

5. In addition to the present permit appeal proceedings, in February 2008, WELC and other Plaintiffs filed a CWA citizen suit against LANS and DOE in the United States District Court for the District of New Mexico. In that case, Amigos Bravos et al. v. U.S. Department of Energy et al., WELC raised issues related to LANL's

NPDES Multi-Sector General Permit coverage that are similar to the issues raised here. Both WELC and LANS/DOE have expressed a desire to reach an agreement that would resolve both this Permit appeal and the district court case.

6. Based on the complex nature of both the permitted facility and the issues raised in the Petition for Review and the resulting need for extensive coordination between the Region and EPA Headquarters on these issues, the Region filed a Motion for Extension of Time in Which to File Region 6's Response to Petition for Review on April 17, 2009, asking for an additional six (6) weeks, or until June 11, 2009, to file a response.

7. On April 21, 2009, the Board granted both the Region's request for an extension of time and LANS/DOE's request to intervene in these proceedings and file a joint response to the Petition for Review. The Board's Order stated that both the Region's and LANS/DOE's responses were due on or before Thursday, June 11, 2009.

8. Upon consideration of the permitting documents and the Petition for Review and based on preliminary discussions, the parties requested that the Board extend the June 11, 2009, deadline for the Region and LANS/DOE to file their respective responses to the Petition for Review until September 11, 2009, in order to allow the parties to engage in settlement discussions.

9. On June 9, 2009, the Board granted the parties' joint request for an extension of time until September 11, 2009. The Board also ordered the parties to jointly file, no later than August 11, 2009, a status report on the progress of settlement negotiations.

10. In order to accommodate on-going settlement talks, on August 11, 2009, the parties filed a third motion to extend the deadline for filing a response to the Petition

for Review until October 14, 2009. On September 4, 2009, the Board granted the parties' request, except that the Board extended the deadline until October 23, 2009. The Board also ordered the Parties to file, no later than October 16, 2009, a status report on the progress of settlement negotiations.

11. Because settlement negotiations were progressing well, the parties jointly filed a fourth, followed by a fifth motion asking that the filing deadline be extended from October 23, 2009, until December 4, 2009, and from December 4, 2009, until January 18, 2010, respectively. The Board granted both motions, giving the parties until Tuesday, January 19, 2010 to file their responses to the petition.

12. On January 19, 2010, the parties filed with the Board a request for an additional extension of time submitting that settlement talks throughout December and January had been fruitful and that the parties were close to agreement on proposed settlement language. The Board granted the parties' request, extending the deadline until March 5, 2010.

13. At this time, the parties submit that they are on the verge of reaching an agreement in principle regarding this matter, but need an additional week to reach a final agreement and get final approval from the Petitioners and LANL, DOE and EPA upper management.

WHEREFORE, the parties jointly and respectfully request an additional one week extension of the deadline for the Region and LANS/DOE to file their respective responses to the Petition for Review from March 5, 2010 until March 12, 2010.

Respectfully submitted,

E. Renea Ryland
Assistant Regional Counsel
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202
(214) 665-2130
Counsel for EPA, Region 6

/s James T. Banks*
James T. Banks
Adam J. Siegel
HOGAN & HARTSON LLP
555 13TH Street, NW
Washington, D.C. 20004
(202) 637-5600
Counsel for LANS

/s Lisa Cummings**
Lisa Cummings
U.S. Department of Energy
Los Alamos Site Office
3747 West Jemez Road
Los Alamos, NM 87544
(505) 665 -9172
Counsel for DOE

/s Matt Bishop*
Matthew Bishop
Megan Anderson
Western Environmental Law Center
P.O. Box 1507
Taos, NM 87571
(575) 751-0351
Counsel for Petitioners

*pursuant to e-mail or voice-mail authorization 03/05/10.
**was unable to reach for final signature authorization due to illness