

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

In re:)
)
)
U.S. Department of Energy and) NPDES Appeal No. 22-01M
Triad National Security, LLC)
)
NPDES Permit No. NM0028355)

**PERMIT APPLICANTS’ REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE
SURRESPONSE**

Permit Applicants, the National Nuclear Security Administration of the U.S. Department of Energy (“DOE/NNSA”) and Triad National Security, LLC (“Triad”) (collectively, “Permittees”), submit this reply in support of their Motion for Leave to File Surrespone (“Motion”) (EAB Dkt. #13).

In their response to the Motion (EAB Dkt. #14), Petitioners suggest that Permittees should not be surprised by the content of Petitioners’ Reply Brief on Petition for Review (EAB Dkt. #12). Contrary to Petitioners’ suggestion, the Permittees *were surprised* to see new factual assertions and new legal arguments in Petitioners’ reply brief since that practice is explicitly prohibited. 40 C.F.R. § 124.19(c)(2); *see also* EAB Practice Manual § IV(D)(6)(b) (“Petitioners may not raise new issues or arguments in their reply brief.”).

As the Board has said in addressing this issue:

The Environmental Appeals Board (“Board”) has discretion to grant a motion for leave to file a surreply. 40 C.F.R. § 124.19(n). The Board typically exercises its discretion to grant leave to file a surreply ‘where allegations arise that a reply brief raises new arguments or where further briefing would otherwise assist the Board in resolving disputed issues.’ *In re Granite Shore Power Merrimack L.L.C.*, NPDES Appeal No. 20-05, at 2 (EAB Nov. 24, 2020) (Order Granting Motion for Leave to File Surreply).

In re City of Keene, NPDES Appeal No. 21-03, at 2 (EAB Feb. 02, 2022) (Order Granting Motion for Leave to File Surreply); *see also* EAB Practice Manual § IV(D)(6)(b) (“If a reply brief has been filed, the EAB may similarly, upon motion, allow the filing of a surreply brief.”). Permittees respectfully submit that a surresponse would assist the Board in resolving the issues in this case.

For the reasons outlined in the Motion, Permittees request that the Board grant leave for Permittees to file a surresponse in this matter.

Dated: August 23, 2022

Respectfully submitted*,

/s/ James T. Banks

James T. Banks
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Telephone: 202-637-5802
E-mail: james.banks@hoganlovells.com

/s/ Cristina A. Mulcahy

Cristina A. Mulcahy
Office of General Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187

Los Alamos, NM 87545-
Tel.: 505-667-3766
E-mail: mulcahy@lanl.gov
E-mail: mcreynolds@lanl.gov

Attorneys for Triad National Security, LLC

*The Department of Energy, National Nuclear Security Administration's Site Counsel for the Los Alamos Site Office joins in this Reply in Support of Motion for Leave to File Surreponse.

CERTIFICATE OF SERVICE

I hereby certify that, on August 23, 2022, I served the foregoing Permit Applicants' Reply in Support of Motion for Leave to File Surreponse, in connection with *In re U.S. Dep't of Energy & Triad Nat'l Sec., L.L.C.*, on the following persons by e-mail in accordance with the Environmental Appeals Board's September 21, 2020 Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals:

For: Concerned Citizens for Nuclear Safety, et al.

Lindsay A. Lovejoy, Jr.
3600 Cerrillos Road, Unit 1001A
Santa Fe, NM 87507
Telephone: (505) 983-1800
Email: lindsay@lindsaylovejoy.com

Joni Arends
Concerned Citizens for Nuclear Safety
P.O. Box 31147
Santa Fe, NM 87594-1147
Telephone: 505-986-1973
Email: jarends@nuclearactive.org

For: EPA

Jay Przyborski
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
przyborski.jay@epa.gov
Tel. (214) 665-6605

Dated: August 23, 2022

/s/ James T. Banks
James T. Banks
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Telephone: 202-637-5802
E-mail: james.banks@hoganlovells.com

Attorney for Triad National Security, LLC