

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

Petitioners’ Response to LANL’s Motion to File a Surreponse

Respondents Triad National Security, LLC and U.S. Department of Energy (collectively, “LANL”) move to file an additional brief. When LANL requested Citizens’ consent, we did not know the purpose and so took no position. The motion has been filed, and Citizens oppose. None of the subjects of the proposed surreponse can have been a surprise to LANL.

Fundamentally, this case concerns Region 6’s claim of authority to issue a NPDES permit for a “potential” discharge. (Response to Comments at 10-11) (AR H.5). If this authority is sustained, the genie is out of the bottle. EPA Regions will issue and impose permits wherever they envision a “potential discharge.” But Congress has directed otherwise:

The triggering statutory term here is not the word "discharge" alone, but "discharge of a pollutant," a phrase made narrower by its specific definition requiring an "addition" of a pollutant to the water. § 1362(12).

S. D. Warren Co. v. Me. Bd. of Env'tl. Prot., 547 U.S. 370, 380-81, 126 S. Ct. 1843, 1850 (2006).

Region 6's claim is invalid. More can be written, but it will not help the Board.

Conclusion

The motion for leave to file a surrejoinder should be denied.

Respectfully submitted,

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August 16, 2022

CERTIFICATE OF SERVICE

I, Joni Arends, hereby certify that on this day I electronically filed the *Petitioners' Response to LANL's Motion to File a Surreponse* using the Environmental Appeals Board (EAB) electronic filing system at [https://yosemite.epa.gov/OA/EAB/EABALJ Upload.nsf/main menu?OpenForm](https://yosemite.epa.gov/OA/EAB/EABALJUpload.nsf/main%20menu?OpenForm)

Under the EAB 's Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals, dated September 21, 2020, I emailed the *Petitioners' Response to LANL's Motion to File a Surreponse* under 40 C.F.R. § 124.19 to the following:

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Dated: August 16, 2022.

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