

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

_____)	
In re:)	
)	
U.S. Department of Energy and Triad)	NPDES Appeal No. 23-04
National Security, LLC)	
)	
Permit No. NM0028355)	
_____)	

UNOPPOSED MOTION FOR EXTENSION OF TIME

The Environmental Protection Agency, Region 6 (EPA) requests that the Environmental Appeals Board (EAB) grant an extension of time to file its response to the petition, certified index of the administrative record, and the relevant portions of the administrative record in the above-captioned matter. EPA requests an extension in two parts: 1) a fourteen (14) day extension, for reasons explained below and 2) an extension that would take effect in the event of a government lapse in funding and agency shutdown.

Fourteen-Day Extension

EPA seeks a fourteen-day extension of time to file a response for two reasons. First, the issues raised by this petition concern matters central to the agency’s nationwide implementation of EPA programs, including the National Pollutant Discharge Elimination System (NPDES) program and, potentially, the Resource Conservation and Recovery Act. Therefore, preparation of the response requires close coordination between Region 6, the EPA Office of Water, the EPA Office of Land and Emergency Management, and the EPA Office of General Counsel. EPA

would not have sufficient time to ensure such coordination and adequately address the issues raised by the petition under the current deadline for EPA's response of November 29, 2023.

EPA also requests a fourteen-day extension of time because EPA staff primarily responsible for preparation of both the final permit and the petition response will be absent from official duty for an extended portion of the thirty-day response period, including the response due date.

EPA believes a fourteen (14) day extension of time from the November 29, 2023, deadline, to December 13, 2023, would allow EPA time to provide an adequate response to the Petition for Review of EPA's permit decision and will not prejudice the Petitioner.

Extension in the Event of a Government Shutdown

EPA also requests an extension that would only take effect in the event of a lapse in funding for the federal government that shuts down the EPA. As of the writing of this motion, a government shutdown is possible as early as November 17, 2023. It is impossible to know how exactly this may impact the EPA, which sometimes has sufficient funds to continue operating for some days following a lapse in funding. Once EPA shuts down, it is not clear which, if any, agency staff would be allowed to continue preparation of the response. As noted above, preparation of an adequate response requires input from many individuals and offices within EPA. Given these uncertainties, EPA requests that, in the event of a government shutdown, for each day the EPA is not operating in its normal capacity, one day be added to the time granted for EPA to respond. Because EPA staff are not allowed to work during shutdowns without special authorization, this extension would not alter EPA's total number of days to prepare a petition and would not prejudice the Petitioner.

Based on an exchange of emails with counsel for Petitioners on November 7, 2023, EPA represents that counsel for Petitioners does not oppose this motion. For the reasons set forth above, EPA respectfully requests that its Unopposed Motion for Extension of Time to respond to the Petition for Review of EPA's permit decision be granted.

Respectfully submitted,

___/s/ Jay Przyborski_____

Jay Przyborski
Assistant Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
214-665-6605
Przyborski.jay@epa.gov

Date: November 8, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2022, I served the foregoing document on the following persons by email in accordance with the EAB'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: Triad National Security, LLC and the U.S. Department of Energy

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

Maureen Dolan
Maxine M. McReynolds
Office of General Counsel
Los Alamos National Laboratory
P.O. Box 1663, MS A187
Los Alamos, NM 87545-0001
(505) 667-3766
E-mail: dolan@lanl.gov
E-mail: mcreynolds@lanl.gov

Silas R. DeRoma
Stephen Jochem
U.S. DOE NNSA, Los Alamos Site Office
3747 W. Jemez Rd.
Los Alamos, NM 87544
Tel. 505-667-4668
E-mail: silas.deroma@nnsa.doe.gov
E-mail: stephen.jochem@nnsa.doe.gov

_____/s/ Jay Przyborski_____
Jay Przyborski
Assistant Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
214-665-6605
Przyborski.jay@epa.gov