

Northwest
Eugene, Oregon

Northern Rockies
Helena, Montana

Southwest
Taos, New Mexico

Southern Rockies
Durango, Colorado

Defending the West

www.westernlaw.org

Western Environmental Law Center

November 12, 2010

Via Facsimile and Federal Express Overnight Mail

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W. Suite 600
Washington, D.C. 20005
Fax: 202.233.0121

Re: Motion to Voluntarily Dismiss, NPDES Appeal No. NPDES 09-05

To Whom It May Concern:

Enclosed for filing please find an original and two copies of *Motion to Voluntarily Dismiss*, NPDES Appeal No. NPDES 09-05. In addition, we have enclosed an extra copy to be date stamped and returned in the enclosed envelope.

Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,

Megan Anderson

RECEIVED
U.S. E.P.A.

2010 NOV 12 PM 1:48

ENVIR. APPEALS BOARD

100% recycled, unbleached, soy inks

In re: Los Alamos National Laboratory

NPDES Appeal No. NPDES 09-05

MOTION TO VOLUNTARILY
DISMISS PETITION FOR
REVIEW

BACKGROUND

Page 002

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 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. On April 17, 2009, the Region filed a Motion for Extension of Time in Which to File Region 6's Response to Petition for Review.

4. 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, giving both parties until June 11, 2009 to file their responses. By subsequent Orders, the Board extended the Region's and DOE/LAN's response deadlines until March 19, 2010.

5. On March 19, 2010, the Parties filed with the Board a Stipulation and Joint Motion to Stay these proceedings pending completion of a permit modification agreed to by the Parties in settlement of the Petitioner's appeal. The Stipulation stated that EPA expected to complete the permit modification process by August 6, 2010, but acknowledged that the Region's decision on the permit modification was not pre-determined and must take into account information introduced through public comment.

6. By Order dated March 25, 2010, the Board granted the Parties' Motion to

Stay this proceeding in order to allow the Parties time to put their settlement into effect. In its Order, the Board noted that the Parties had projected four alternative courses of action through which they might bring this matter to conclusion, including voluntary dismissal of the petition by Petitioners upon successful completion of the permit modification process. The Board also noted a fifth alternative, namely that the permit modification process might take longer than anticipated by the Region and that the Parties might jointly desire to continue the stay to allow the Region to complete its decision. The Board directed the Parties to file, either jointly or individually, an appropriate document by Wednesday, September 22, 2010, taking one of the described courses of action for bringing this matter to conclusion.

7. The Parties sought a final stay on September 23, 2010, requesting additional time to allow the Region to revise the permit modification as a result of public comment. The Board granted the stay until November 1, 2010 and directed the Parties to file an appropriate document putting one of the alternatives outlined in the Board's March 25, 2010 order into effect.


8. The Region issued the permit agreed upon by the Parties in their settlement agreement on November 1, 2010.

9. As a result, Petitioners hereby file this motion requesting a dismissal of their Petition for Review.

REQUESTED RELIEF

Petitioners now voluntarily request that this Board dismiss the Petition for Review.

Respectfully submitted this 12th day of November 2010,


Megan Anderson
Matthew Bishop
Western Environmental Law Center
P.O. Box 1507
Taos, NM 87571
(575) 751-0351

Counsel for Petitioners


CERTIFICATE OF SERVICE

This is to certify that on November 12, 2010, the foregoing MOTION TO VOLUNTARILY DISMISS PETITION FOR REVIEW was served on the following counsel via electronic and First Class mail:

E. Renea Ryland
U.S. EPA, Region 6 (MC-6RCM)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Fax: (214)-665-2182
Email: Ryland.Renea@epamail.epa.gov

James T. Banks
Adam J. Siegel
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Fax: (202) 637-5910
Email: JTBanks@HHLAW.com

Lisa Cummings
US Department of Energy
Los Alamos Site Office
3747 West Jemez Road
Los Alamos, NM 87544
Fax: (505) 665-4873 Email: lcummings@doeal.gov


Megan Anderson