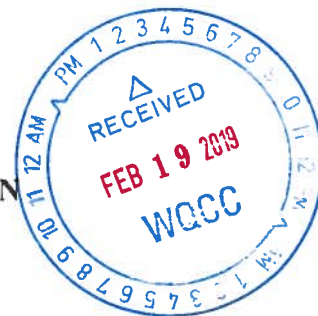


STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



IN RE: PETITION FOR REVIEW OF THE NEW MEXICO
SECRETARY OF THE ENVIRONMENT'S DECISION
GRANTING GROUNDWATER DISCHARGE
PERMIT DP-1132 IN PROCEEDING GWB 17-20(P)

WQCC NO. 18-05(A)

**RESPONSE TO COMMUNITIES FOR CLEAN WATER MOTION TO VACATE
AGENCY DECISION AND REMAND THE PETITION FOR REVIEW OF DP-1132**

INTRODUCTION

The United States Department of Energy (DOE) and Triad National Security, LLC (Triad) (collectively DOE/Triad), as joint permittees under Discharge Permit No. 1132 (DP-1132), submit this response brief (Response) to the Communities for Clean Water (CCW) Motion to Vacate Agency Decision and Remand the Petition for Review of DP-1132 (Motion to Vacate). Although CCW's Motion to Vacate correctly and justifiably points out that the Hearing Officer conceivably applied for a position with DOE's National Nuclear Security Administration (NNSA) prior to the conclusion of the permit proceedings before the New Mexico Environment Department (Department), DOE/Triad respectfully submit that the ultimate relief sought by CCW in its Motion to Vacate—vacating the Department Secretary's issuance of DP-1132 and remanding to the Department for further undefined proceedings—is not warranted or necessary for several reasons, as discussed herein, and should be denied.

First, the Water Quality Control Commission (Commission) has everything it needs in the record to perform its *de novo* review of the final decision to issue the permit, which was a decision made by the Secretary, not by the Hearing Officer, despite CCW's suggestion to the contrary.¹ See

¹ CCW's Motion to Vacate incorrectly refers to the Hearing Officer's revised report as the "final ruling" on DP-1132. Motion to Vacate, p. 5. In fact, it was the Department's Secretary that made the final ruling below. See AR 14193-14196.

Point I. Second, CCW resisted issuance of DP-1132 exclusively on a legal ground, and the Hearing Officer's initial rejection of CCW's legal argument occurred when she denied CCW's pre-hearing Motion to Dismiss, well prior to the posting of the position for which the Hearing Officer subsequently applied. *See* Point II. Third, CCW initially requested a public hearing but then requested that the hearing be cancelled, presented no witnesses or technical testimony at the hearing, sought no stay of DP-1132, and made no objection to specific provisions therein, all of which underscore that CCW rested its entire case on the legal position set forth in its Motion to Dismiss. That Motion, in addition to having been denied by the Hearing Officer before the NNSA position was even posted, is easily reviewable by this Commission under its *de novo* permit review standard. *See* Point III. Fourth, CCW asks the Commission to vacate DP-1132 and remand, but without saying what exactly it contemplates should happen on remand, or acknowledging the inefficiency of a potential do-over for all concerned. *See* Point IV. Finally, by simply and efficiently performing its review function as contemplated by the Water Quality Act (WQA), the Commission can account for the speculative bias concerns raised by CCW without upsetting the Permittees' considerable permit compliance undertakings to date. *See* Point V and the Affidavit of Michael Saladen, attached hereto as Exhibit A.

I. THE COMMISSION HAS EVERYTHING IT NEEDS TO ADDRESS THE BIAS CONCERNS RAISED BY CCW AS PART OF ITS PERMIT REVIEW

The thrust of CCW's Motion to Vacate is that the Hearing Officer, who CCW speculates may have applied for a position with the NNSA while serving as Hearing Officer during at least a portion of the permitting proceedings below, violated standards of conduct and was susceptible to being biased. Motion to Vacate, pp. 6-10.² The facts offered in support of CCW's motion, which

² It should be noted that CCW's Motion to Vacate fails to acknowledge or address what is arguably the most important New Mexico case on the issue of bias involving agency decision makers. *See Phelps Dodge*

were based on the extent of employment information DOE could legally disclose under the Freedom of Information Act, concededly do make CCW's speculation plausible that the Hearing Officer conceivably may have submitted an application for employment with the NNSA after the hearing itself but while the proceeding was in its latter stages. Further, DOE/Triad acknowledge that although the Hearing Officer decided CCW's Motion to Dismiss before the NNSA job was posted, and although the offer and acceptance of employment occurred after the Hearing Officer's work was completed, the facts do not establish exactly when any interviews may have occurred. Accordingly, it would be justified for the Commission to assume for these purposes that contact may well have occurred prior to the Hearing Officer's issuance of her report and revised report.³

That said, DOE/Triad strongly disagree that it is necessary for the Commission to vacate the Department Secretary's decision to issue the permit, and remand back to a new Secretary that was not in office at the time the record was created and the decision was made. Instead, the Commission should simply address the potential that the Hearing Officer's employment application may have made her susceptible to bias as part of the Commission's substantial oversight authority under the express provisions and structure of the WQA. The oversight authority of the Commission, as DOE/Triad discuss at length in their Answer Brief, includes the

Tyrone, Inc. v. New Mexico Water Quality Control Comm'n, 2006-NMCA-115, 140 N.M. 464, 143 P.3d 502. In that case, the New Mexico Court of Appeals soundly rejected challenges to participation by various members of this Commission based upon prior statements and involvement strongly suggestive of bias. *Id.*

³ Although CCW correctly noted in its motion that "[a]ll opposed the motion," Motion to Vacate at p. 1, CCW did not acknowledge that the Department and DOE/Triad offered an eminently reasonable alternative to the Motion to Vacate and the potential it poses for a complete do-over of the public hearing on remand. Specifically, as reflected in the e-mail exchanges comprising Exhibit B hereto, their opposition was to the idea of proceeding via a motion to vacate and remand; the Department and DOE/Triad indicated they would not oppose accommodating a full briefing of the issues as part of the actual permit review appeal, since any proposal to vacate and remand must be made by the Commission. In other words, the parties do not actually oppose having the Commission consider and address head-on CCW's speculative allegations about the possible timing of the Hearing Officer's employment application and her potential susceptibility to a temptation of bias (whether or not there was actual bias) while she prepared her report and revised report.

authority to review permit decisions and legal determinations *de novo*, meaning the Commission is authorized to independently assess the Secretary's permitting decisions anew, unbound by the Secretary's rationale—or, in this case, the Secretary's rationale as informed by the Hearing Officer's report, including her offered findings of fact and conclusions of law. In fact, as discussed next, the WQA specifically mandates that the Commission articulates its own findings of fact and conclusions of law upon completing its permit review and oversight function under the WQA.

The administrative review capacity of the Commission over permitting actions, and the basic permit review processes, are spelled out in 1978 NMSA, Section 74-6-5(O) through -5(S). The core of the Commission's function as reviewer of permitting decisions by its constituent agencies, such as the Department, are stated in the WQA as follows:

The commission shall review the record compiled before the constituent agency, including the transcript of any public hearing held on the application or draft permit, and shall allow any party to submit arguments. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission. The commission shall consider and weigh only the evidence contained in the record before the constituent agency and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the constituent agency. Based on the review of the evidence, the arguments of the parties and recommendations of the hearing officer, the commission shall sustain, modify or reverse the action of the constituent agency. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

1978 NMSA, Section 74-6-5(Q).

Several things must be noted about this statutory provision. First, the Commission "shall not be bound by the factual findings or legal conclusions of the Department." Second, the Commission not only may sustain or reverse the action of the Department; it also may "modify" the Department's action. Third, the Commission *itself* "shall enter ultimate findings of fact and conclusions of law" in recording the outcome of its review. Fourth, the Commission *may* designate

its own hearing officer “to review the record and the arguments of the parties and recommend a decision to the [C]ommission.” Finally, and most importantly for these purposes, the Commission “shall consider and weigh *only* evidence contained in the record (emphasis added)” and the hearing officer’s recommendations, if any.⁴ In essence, then, the administrative permit review function of the Commission, in its structural oversight role as the agency ultimately responsible for the actions of its constituent agencies, is to make sure that the constituent agency got it right, and to fix things if it did not. Nothing in the WQA’s permit review standard compels the Commission to give any weight whatsoever to the offerings of the Department’s Hearing Officer through her initial or revised reports. Accordingly, the statutory review standard completely obviates the necessity to vacate or remand regardless of any possible bias susceptibility of the Hearing Officer.

The Commission’s statutory review standard and process easily allow for review of CCW’s singular focus, i.e., the legal issue it raised in its pre-hearing Motion to Dismiss. *See* AR 15255-15274, 15223-15163. In the normal course of the Parties’ addressing that motion, the legal issue was fully briefed. The issue was essentially briefed again at the close of the hearing. *See* AR 14231-14298, 14197-14213. In short, the legal issue raised by CCW and the briefing that occurred below provides the Commission with ample basis to independently review the legal positions of the parties.

Moreover, DOE/Triad’s position is essentially bolstered by CCW’s own positions advanced in its Opening Brief, before it had a tactical incentive to now elevate the Hearing Officer’s involvement and significance to suit its present arguments to vacate and remand. In its

⁴ The reference to hearing officer recommendations in the third sentence of 74-6-5(Q) appears to be to the recommendations the immediately preceding second sentence of that provision indicates may be obtained by the Commission from *its own* hearing officer. Regardless, since the Commission is not bound, under the express language of 74-6-5(Q), by the findings or conclusions of the Department, the Commission likewise need not heed or give weight to any findings or conclusions of the Department’s hearing officer.

Opening Brief, CCW emphasized two points—one a correct legal point, and the other a self-serving characterization—in the course of arguing that the Commission should reverse the Secretary’s permitting decision. First, CCW argued that the legal issue presented by its Motion to Dismiss, which the Secretary did not grant, must be considered *de novo* on appeal. Opening Brief, p. 11. DOE/Triad agree that this is a correct principle of New Mexico appellate law, but disagree that it leads to the conclusion that permit issuance by the Secretary should be vacated because, as just discussed, CCW solely asserted a legal basis in its Motion to Dismiss for not issuing DP-1132. Second, CCW previously asserted that the Hearing Officer “ignored” CCW’s legal arguments, concluding therefore that the Hearing Officer should be given little credence. Opening Brief, p. 25. DOE/Triad submit that if the Hearing Officer truly “ignored” CCW’s legal arguments, then conceptually any bias of the Hearing Officer put CCW in no worse position than it was already in before CCW learned of the potential bias. The reality, however, as discussed next, is that the Hearing Officer did not ignore CCW’s legal arguments, and instead rejected them on solid and well-established legal grounds.⁵

II. CCW’S RESISTANCE TO DP-1132 WAS ENTIRELY ON A LEGAL GROUND DECIDED PRIOR TO THE HEARING, ON FULL BRIEFING

DP-1132 controls certain specified discharges of water contaminants from the Radioactive Liquid Waste Treatment Facility (RLWTF), a mission-critical nuclear support facility that treats low-level and transuranic liquid wastewater from processes at various generator locations throughout Los Alamos National Laboratory (LANL). *See* AR 15178. The Secretary granted CCW’s request for a public hearing on DP-1132 and set it for April 19, 2018. As the public hearing

⁵ It is not surprising that CCW declined the invitation of the Department and DOE/Triad to amend its briefing so that the admittedly unfortunate circumstances involving the Hearing Officer could be cohesively briefed by the Parties in this appeal. Doing so would have more directly revealed that CCW sought to downplay the Hearing Officer’s involvement previously, but now elevates it as incurably problematic.

on DP-1132 approached, on March 16, 2018, CCW filed a Motion to Dismiss seeking dismissal of the very hearing it had initially requested. AR 15255-15274. In that motion, CCW sought to dismiss the DP-1132 proceeding based exclusively on a legal position that the Secretary had no statutory authority under the WQA to regulate the RLWTF and issue DP-1132. AR 15256. In short, CCW argued that the WQA applies only to facilities that have an “actual” discharge of water contaminants to groundwater, and it alleged that the RLWTF “does not discharge, nor plan” to discharge water contaminants. AR 15256 and 15265. CCW argued that the RLWTF instead should be exclusively regulated under hazardous waste regimes. *Id.* So convinced was CCW of its legal position that its motion sought to dismiss the required public hearing it had previously requested before the Department under the WQA. AR 15256. Further, in a pre-hearing statement of intent, CCW expressly stated its intention not to offer a single technical witness—nor did it in fact offer a single technical witness—to address any of the technical requirements and conditions of DP-1132. AR 15101-15105. CCW did not challenge a single condition of DP-1132, nor did it seek to stay the effectiveness of DP-1132 while pursuing the present administrative appeal to the Commission. These circumstances utterly belie the need for a remand.

Based on the sequence of events advanced by CCW in its newly offered evidence included as Exhibit B to its Motion to Vacate, the NNSA published its announcement of the job opening in question on June 15, 2018, and allowed for applications to be submitted until the application closed on July 26, 2018. Both of these dates came after CCW’s earlier March 16, 2018 Motion to Dismiss was filed by CCW, after the motion was fully briefed by the parties, and after the motion was decided on the basis of the briefs in an Order entered on the day before commencement of the hearing. All parties, including CCW, briefed the issues presented in CCW’s Motion to Dismiss in advance of the hearing. *See* CCW’s Motion to Dismiss, filed March 16, 2018, AR 15255-15274;

NMED's Response in Opposition to CCW's Motion to Dismiss, filed on April 2, 2018, AR 15223-15252; LANS & DOE's Response in Opposition to CCW's Motion to Dismiss, filed on April 2, 2018, AR 15164-15222; CCW's Reply Brief, filed on April 6, 2018, AR 15154-15163. Order Denying CCW's Motion to Dismiss, filed April 18, 2018, AR 14620-14622.

This telling sequence of pertinent events, which CCW fails to acknowledge anywhere in its Motion to Vacate, demonstrates that CCW had lost its legal position well ahead of any NNSA employment posting. It is certainly true that, following her April 18 Order, the Hearing Officer subsequently reaffirmed that earlier decision on the Motion to Dismiss without change in her initial and revised reports, and that both of such reports came while the employment posting was still open. Regardless, the fact that the Hearing Officer's Order on the Motion to Dismiss went against CCW months before the NNSA employment posting may give the Commission substantive confidence that CCW's legal positions on DP-1132 were impartially decided. But that confidence is not a prerequisite to reviewing CCW's legal issue *de novo* and affirming the Secretary's decision to issue DP-1132. The Commission has all it needs to decide CCW's legal issue and independently set out its findings and conclusions as mandated by 1978 NMSA, Section 74-6-5(Q) quoted above.

III. CCW'S NOTABLY LIMITED APPROACH TO DP-1132 UNDERSCORES THAT VACATING AND REMANDING IS WHOLLY UNWARRANTED

Not only does the Commission have everything it needs—in terms of legal position statements and statutory permit review authority—to conduct its review independently of any potentially tainted reaffirmations of the Hearing Officer; there also is no real logic or basis to remand DP-1132 in light of the approach taken by CCW at the hearing below. Specifically, as shown above, CCW sought to avoid any hearing, presented no technical testimony, made no technical evidence or offerings, and did not object to specific provisions of DP-1132. Finally, after the final permit was issued, CCW did not seek to stay the effectiveness of DP-1132. Now,

however, CCW's sudden interest in having the Commission remand the permit for further proceedings before the Secretary can be seen for what it likely is: a ploy to cloak the DP-1132 proceeding in a cloud of doubt in hopes of getting a new bite at the apple before the Secretary. CCW's prior approach makes such an outcome wholly unwarranted. Starting over makes little sense when the Commission is empowered to focus on CCW's Motion to Dismiss in its review capacity while giving the Hearing Officer's contributions whatever credence or lack of credence they deserve and the Commission deems appropriate.

IV. CCW DOES NOT SAY WHAT SHOULD HAPPEN ON REMAND, WHILE A PERMIT REVIEW WOULD BETTER SERVE EFFICIENCY FOR ALL

The shortcomings of CCW's request to vacate and remand to the Secretary are most obvious when one considers that CCW has articulated no specific proposal for what it believes should happen on the remand it requests. For example, CCW nowhere states whether it believes a new hearing officer should be appointed: (1) to decide how to proceed; (2) to reconsider the same briefing of the parties; (3) to take the same basic evidence as offered in the prior hearing; (4) to expand opportunities to provide new evidence (such as to CCW, which previously expressly waived its opportunity to offer technical witnesses); (5) to review the record as it currently exists to potentially change what outcome is recommended to the Secretary; or (6) to undertake some combination of these or other options concerning which the parties and Commission are left to their own devices and imaginations. Such a lack of clarity should not be rewarded in this appeal.

One thing, however, is perfectly clear. Any remand and undefined proceedings resulting from remand will be extremely inefficient for all concerned because, regardless of what may happen on remand, inevitably an appeal will again be taken to this Commission under the WQA. Depending on what, if any, additional proceedings were to occur on remand, the whole record that then would have to be considered by the Commission would be more complex, potentially

contradictory, and less certain than the record that now exists for the current permit review. This circumstance would be inefficient and costly for all concerned, when compared to having the Commission simply make its independent determination on DP-1132 in this appeal as proposed by NMED and DOE/Triad. Vacating DP-1132 unnecessarily as proposed by CCW would impose an undue burden and hardship on Permittees due to their numerous, extensive and costly permit compliance efforts expended to date under DP-1132, and potentially would subject DOE/Triad and NMED to duplicative efforts.

V. REVIEWING THE PERMIT WHILE IT REMAINS EFFECTIVE MIGHT AVOID WASTING PERMITTEES' COMPLIANCE EFFORTS TO DATE

DP-1132 was issued by the Department for LANL's mission-critical RLWTF facility on August 29, 2018. Neither CCW nor any other party requested that it be stayed, and as a consequence, the permit has been effective for the intervening five months. During those months, DOE/Triad have expended substantial time and resources to make no fewer than thirteen substantive documentary submissions and four separate work plan and stabilization plan submissions under eleven operative permit conditions, and have advanced efforts on no fewer than nine additional substantive documentary submissions and four additional work plan completion reports under eight permit conditions. *See* Saladen Affid., Exhibit A to this Response. In addition, NMED staff has approved two work plans and has undoubtedly otherwise committed staff time and resources towards ensuring compliance with the permit. *Id.* Vacating and remanding DP-1132 will impose an undue burden and hardship and render all of these considerable compliance undertakings wasted efforts. Those negative consequences and irreparable harms are entirely avoidable given the likely scenario that the Commission will ultimately conclude CCW's legal position is without merit and DP-1132 was providently issued by the Department's Secretary.

A much better, less wasteful and fairer solution would be for the Commission to simply carry out its review function in the present appeal with pre-determination input from the experienced hearing officer the Commission appointed already in this appeal. In doing so, the Commission may freely consider the Department Hearing Officer's potential susceptibility to bias under all the circumstances, and give such weight to her involvement as it deems warranted under the circumstances.

CONCLUSION

In conclusion, DOE/Triad request that the Commission deny CCW's Motion to Vacate and carry out the Commission's permit review function giving due consideration to the issues therein raised, and for such other relief as the Commission deems appropriate.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2018, a copy of the foregoing "Response to Communities for Clean Water Motion to Vacate Agency Decision and Remand the Petition for Review of DP-1132" was hand-delivered to the Hearing Clerk and served via electronic mail to the following:

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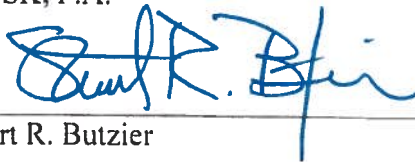
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Stuart R. Butzier

AFFIDAVIT OF MICHAEL THOMAS SALADEN

1. I, Michael Thomas Saladen, am over the age of eighteen and am an employee of Triad National Security, LLC at the Los Alamos National Laboratory (LANL). I have been employed at LANL since April 1, 1991.
2. I am currently employed as an Environmental Manager 3 (ENV Manager 3). I have served in this position since April of 2016. Prior to this position, I served as an Environmental Manager 2 (ENV Manager 2) for approximately eight years. Prior to my position as an Environmental Manager, I served as a Technical Staff Member (TSM) at LANL.
3. As an Environmental Manager, I am the Team Leader for the Environmental Compliance Programs Group (EPC-CP), Water Quality Permitting, and Compliance Team. In this position, I provide leadership for several LANL environmental programs, including management and compliance with New Mexico Water Quality Act (WQA) permitting. I also provide support for EPC-CP's institutional environmental compliance programs, projects, work activities in compliance with regulatory requirements, and LANL policies and procedures.
4. As part of my current job responsibilities, I am the responsible line manager for compliance oversight for the WQA discharge permit known as DP-1132 for LANL's mission-critical nuclear support facility known as the Radioactive Liquid Waste Treatment Facility (RLWTF). The RLWTF receives and treats low-level and transuranic liquid wastewater from processes at various generator locations throughout LANL.
5. Since the issuance of DP-1132 by the New Mexico Environment Department (NMED) on August 29, 2018, the permittees (Department of Energy and Triad National Security, LLC), through the efforts of myself and my staff at LANL, have expended substantial time and resources to deliver no fewer than thirteen substantive documentary deliverables to NMED and four separate work plans and stabilization plans required under eleven operative permit conditions, and have advanced efforts on no fewer than nine additional substantive deliverables and four additional work plan completion reports under eight permit conditions. These are summarized more specifically on the table accompanying this Affidavit as Attachment 1.
6. In addition, NMED staff has approved two work plans and has undoubtedly otherwise committed staff time and resources towards ensuring compliance with DP-1132.

EXHIBIT A

Table 1. Documents Submitted to NMED GWQB.

Condition No	Condition Name	Due Date	Comments	Doc #	Doc Delivery Date	NMED Approval Date	EPRR Posting?
13	Maintenance & Repair	ASAP	Request for a longer period of time to complete repairs to vault and sump alarms	EPC-DO-18-365	10/15/18	NA	No
24	Monitoring Reports	11/1/18	Quarterly Monitoring Report_ 3 rd Qtr 2018	EPC-DO-18-375	10/18/18	NA	Yes 10/31/18
40	Cessation of Operation of Specific Units	10/28/18	Email notification to NMED that Condition No. 40 has been completed	email	10/29/18	NA	No
53, 8	Extensions of Time	NA	Extension of time for completing water tightness testing of the SET pipeline	EPC-DO-18-393	10/31/18	11/13/18 email	No
30	Soil Moisture Monitoring System for SET	12/21/18	Workplan for the SET moisture monitoring boreholes	EPC-DO-18-366	10/31/18	1/30/19	No
33	Replacement of Alluvial Monitoring Wells	11/27/18	Workplan for two new alluvial monitoring wells in Mortandad Canyon	EPC-DO-18-414	11/19/18	1/30/19	Yes 11/30/18
7	Verification of Secondary Containment	11/27/18	Verification that units meet secondary containment requirements	EPC-DO-18-403	11/19/18	NA	Yes 11/30/18
41	Stabilization of Individual Units	2/25/19	Stabilization Plans for Clarifier #1 and 100k tank	EPC-DO-18-428	12/3/18	12/27/18	Yes 12/12/18
13	Maintenance & Repair	NA	Proposed plan for completing repairs to the seven vaults/sumps that are not functioning. See item #1 above	EPC-DO-18-432	12/3/18	NA	No
20	Emergency Response Procedures	12/21/18	Written summary of emergency response procedures	EPC-DO-18-449	12/19/18	NA	Yes 12/19/18
53, 8	Extensions of Time	NA	Extension of time for completing water tightness testing of the outfall pipeline	EPC-DO-19-010	1/23/19	Pending	No
41	Stabilization of Individual Units	2/25/19	Stabilization Plans for Clarifier #2, Gravity Filter, WM2 N/S Tanks, and 75K Tank	EPC-DO-19-007	1/28/19	Pending	Yes 1/31/19
1 & 24	Annual Update and Quarterly Monitoring Report	2/1/2019	Combined Report: Condition No. 1 (Annual Update) and Condition No. 24 (Quarterly Monitoring Report)	EPC-DO-19-018	1/31/19	NA	Yes 2/7/19

ATTACHMENT 1

Table 2. Documents Pending Submittal to NMED GWQB.

Condition No	Condition Name	Due Date	Comments	Doc #	Doc Delivery Date	NMED Approval Date	EPRR Posting?
13	Maintenance and Repair	2/15/19	Inform NMED that the two vault alarms identified in a 12/04/2018 letter to NMED as nonfunctioning have been repaired (EPC-DO-18-432); alarms SM-749 and SM-776. Repairs must be completed by 2/15/19.	pending			No
7	Verification of Secondary Containment	2/28/19	Inform NMED that the design for the six secondary containments that do not have functioning leak detection systems. Provide NMED with a schedule for completing installation of the six leak detection systems.	pending			Yes
21	Installation of Flow Meters	4/26/19	Condition No. 21 requires DOE/Triad to submit written confirmation of installation and calibration of the following four flow meter: influent (WMRM), MES, SET, and Outfall 051.	pending			Yes
24	Monitoring Reports	5/1/19 8/1/19 11/1/19	Quarterly Monitoring Reports	pending			Yes
8	Water Tightness Testing	2/1/2020	Testing procedures and findings from water-tightness testing of the SET and outfall 051 pipelines.	pending			Yes
30	Soil Moisture Monitoring System for SET	90 days following construction	Completion Report for the SET moisture monitoring boreholes.	pending			No
33	Replacement of Alluvial Monitoring Wells	60 days following construction	Completion Report for two new alluvial monitoring wells in Mortandad Canyon.	pending			Yes
41	Stabilization of Individual Units	30 days following stabilization	Completion Report for stabilization of Clarifier #1 and 100k tank.	pending			Yes
41	Stabilization of Individual Units	30 days following stabilization	Completion Report for stabilization of Clarifier #2, Gravity Filter, WM2-N/S Tanks, and 75K Tank.	pending			Yes

Table 3. Work Plans Submitted.

Condition No	Condition Name	Due Date	Comments	Doc. #	Doc Delivery Date	NMED Approval Date	LANL EPRR Posting?
30	Soil Moisture Monitoring System for SET	12/21/18	Workplan for the SET moisture monitoring boreholes	EPC-DO-18-366	10/31/18	1/30/19	No
33	Replacement of Alluvial Monitoring Wells	11/27/18	Workplan for two new alluvial monitoring wells in Mortandad Canyon	EPC-DO-18-414	11/19/18	1/30/19	Yes 11/30/18
41	Stabilization of Individual Units	2/25/19	Stabilization Plans for Clarifier #1 and 100k tank	EPC-DO-18-428	12/3/18	12/27/18	Yes 12/12/18
41	Stabilization of Individual Units	2/25/19	Stabilization Plans for Clarifier #2, Gravity Filter, WM2-N/S Tanks, and 75K Tank	EPC-DO-19-007	1/28/19	Pending	Yes 1/31/19

Table 4. Workplan Completion Reports Pending.

Condition No	Condition Name	Due Date	Comments	Doc. #	Doc Delivery Date	NMED Approval Date	EPRR Posting?
30	Soil Moisture Monitoring System for SET	90 days following construction	Completion Report for the SET moisture monitoring boreholes	pending			No
33	Replacement of Alluvial Monitoring Wells	60 days following construction	Completion Report for two new alluvial monitoring wells in Mortandad Canyon	pending			Yes
41	Stabilization of Individual Units	30 days following stabilization	Completion Report for stabilization of Clarifier #1 and 100k tank	pending			Yes
41	Stabilization of Individual Units	30 days following stabilization	Completion Report for stabilization of Clarifier #2, Gravity Filter, WM2-N/S Tanks, and 75K Tank	pending			Yes

From: Stuart R. Butzier
Sent: Monday, February 4, 2019 11:30 AM
To: Lindsay Lovejoy <lindsay@lindsaylovejoy.com>; 'Jon Block' <jblock@nmelc.org>
Cc: smcmichael@lanl.gov; silas.deroma@nnsa.doe.gov; Christina C. Sheehan <ccs@modrall.com>; 'Verheul, John, NMENV' <John.Verheul@state.nm.us>
Subject: RE: [EXT] RE: DP-1132 proceeding in WQCC

Lindsay and Jon,

Triad and DOE likewise oppose the draft motion in its current form, believe NMED's suggestion is reasonable, and would not oppose a motion to allow an amended opening brief as well as amended answer briefs, nor object to the introduction of new evidence into the record going to the limited issues you raise involving Ms. Anderson's employment by NNSA. In light of the permit review process at the WQCC, and NMED's suggestion to accommodate further briefing, the request to vacate both the hearing officer and the Secretary's decision is unnecessary and inevitably would lead to duplicative efforts and delays without any substantive benefits for any party.

Thanks,



Stuart R. Butzier

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From: Verheul, John, NMENV <John.Verheul@state.nm.us>
Sent: Monday, February 4, 2019 10:13 AM
To: Lindsay Lovejoy <lindsay@lindsaylovejoy.com>; Stuart R. Butzier <sbutzier@modrall.com>
Cc: 'Jon Block' <jblock@nmelc.org>; smcmichael@lanl.gov; silas.deroma@nnsa.doe.gov; Christina C. Sheehan <ccs@modrall.com>
Subject: RE: [EXT] RE: DP-1132 proceeding in WQCC

Lindsay *et al*:

NMED opposes this motion in its current form.

I would respectfully suggest that, rather than a motion to vacate the two Hearing Officer reports and the Final Order, you consider filing a motion to file an amended opening brief based upon new information that was not available at the time you filed your opening brief. This still offers you the ability to fully make your arguments regarding this issue before

the WQCC, and the WQCC would have to rule on your motion in its current form anyway (rather than the Hearing Officer), since your current motion effectively seeks "final resolution of the proceeding". We believe this matter is best addressed via full briefing as part of the permit review rather than via motions practice. NMED would not oppose a motion to file an amended opening brief, with the understanding that other parties would be afforded the opportunity to file amended response briefs. NMED would also not object to the introduction of new evidence into the record (i.e. - the dates provided by counsel for NNSA regarding Ms. Anderson's hiring process) for this purpose.

Thanks,
John

John Verheul
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From: Lindsay Lovejoy <lindsay@lindsaylovejoy.com>
Sent: Friday, February 1, 2019 11:07 AM
To: 'Stuart R. Butzier' <sbutzier@modrall.com>
Cc: 'Jon Block' <jblock@nmelc.org>; smcmichael@lanl.gov; silas.deroma@nnsa.doe.gov; Verheul, John, NMENV <John.Verheul@state.nm.us>; 'Christina C. Sheehan' <ccs@modrall.com>
Subject: [EXT] RE: DP-1132 proceeding in WQCC

Stuart and other counsel--

Here is the draft motion that you requested. We think the situation is pretty clear and the necessary action is also clear and would hope that you and your clients will concur. I do not see much to debate about here, and also think that there are some downsides to having a lengthy debate. In the interest of proceeding smoothly, we can await your response by midday Monday.

Very truly yours,
--Lindsay

From: Stuart R. Butzier [<mailto:sbutzier@modrall.com>]
Sent: Friday, February 01, 2019 10:06 AM
To: 'Lindsay Lovejoy'
Cc: 'Jon Block'; smcmichael@lanl.gov; silas.deroma@nnsa.doe.gov; John.Verheul@State.nm.us; Christina C. Sheehan
Subject: RE: DP-1132 proceeding in WQCC

Lindsay,

I did not see your e-mail below until late last evening. You have asked for positions on it by this morning, which suggests to me that you may be planning to file a motion today. Two questions: 1. Would you please send us a copy of your motion today so that we can consider more fully the grounds and relief you propose to request before getting back to you with our positions; and 2. Would you please allow until Monday or Tuesday to get back to you with our positions on it before you file anything? I, at least, am having difficulty connecting with our client today and need some time to review things with her on what is an otherwise busy Friday for me.

Appreciate it,



Stuart R. Butzier

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From: Lindsay Lovejoy <lindsay@lindsaylovejoy.com>
Sent: Thursday, January 31, 2019 4:38 PM
To: Stuart R. Butzier <sbutzier@modrall.com>; smcmichael@lanl.gov; silas.deroma@nnsa.doe.gov;
John.Verheul@State.nm.us
Cc: 'Jon Block' <jblock@nmeic.org>
Subject: Re: DP-1132 proceeding in WQCC

Counsel:

Mr. Block and I propose to file a motion to vacate the decision of the NMED Secretary in the DP-1132 matter and to vacate also the Hearing Officer report(s) on which the Secretary's decision is based. The ground for such motion is that the Hearing Officer was disqualified by reason of her actions to obtain employment with NNSA. Please advise us today or tomorrow morning of your position on such a motion. Thank you for your cooperation.

Yours truly,

--Lindsay Lovejoy

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