

Termination of Wastewater Outfall: U.S. Environmental Protection Agency Environmental Appeals Board Decision



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The Concerned Citizens for Nuclear Safety (“Citizens”) filed an Environmental Appeals Board (“EAB”) appeal under 40 C.F.R. §124.5(b) seeking review of the United States Environmental Protection Agency’s (“EPA”) denial of a request to terminate as to a facility wastewater outfall (“Outfall 051”).

Outfall 051 was encompassed by a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit issued for operations at the Los Alamos National Laboratory in New Mexico (“Laboratory”).

The EPA is stated to have issued the NPDES Permit in 2014 authorizing the Laboratory and United States Department of Energy to continue discharges from eleven (11) sanitary and/or industrial outfalls at the Laboratory. The Permit authorized the discharge of treated wastewater from the Radioactive Liquid Waste Treatment Facility through Outfall 051.

Concerned Citizens alleged that EPA erred in denying its subsequent request to terminate the 2014 NPDES Permit as to Outfall 051. The organization argued that the Laboratory had not discharged liquid waste from that Outfall since 2010. It further asserted that permit termination was appropriate under 40 C.F.R. § 122.64(a)(1), which provides that after an NPDES permit is issued, “a change in any condition” requiring a reduction or elimination of any discharge is cause for permanent termination.

The EPA responded that Concerned Citizens failed to establish a change in any condition justifying permit termination.

The EAB concluded in a March 14th decision that the EPA did not clearly err or abuse its discretion in denying Concerned Citizens’ request to terminate the 2014 NPDES permit as to Outfall 051.

The EAB decision noted that when the EPA issued the 2014 NPDES permit, discharges from OutFall 051 had not occurred since 2010. Further such discharges would only be necessary if certain equipment became unavailable due to maintenance, malfunction or capacity shortage. As a result, EAB held that the record supports the EPA’s determination that Concerned Citizens failed to establish a change in any condition after the federal agency issued the NPDES permit justifying termination pursuant to 40 C.F.R § 122.64(a)(4). As a result, EAB denied the appeal.

[A copy of the decision can be downloaded here.](#)