BEFORE THE ENVIRONMENTAL APPEALS BOARD

U.S. ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

In re: ESSROC Cement Corporation	)	
RCRA Permit No. IND 005 081 542	)	Appeal No. RCRA 13-03

EPA REGION 5'S SURREPLY BRIEF

Sabrina Argentieri
Mark J. Palermo
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Tel: (312) 353-5485; (312) 886-6082
Fax: (312)-385-5527
Email: argentieri.sabrina@epa.gov;
palermo.mark@epa.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Federal Register Entries

INTRODUCTION

The U.S. Environmental Protection Agency, Region 5 ("Region 5" or the "Region) has sought leave to file this Surreply Brief with the Environmental Appeals Board ("Board"), to respond to new legal and technical issues and arguments raised by the Petitioner ESSROC Cement Corporation ("Petitioner" or "ESSROC") in its Reply Brief that were not previously raised in its Petition for Review or the comments it submitted during the draft permit public comment period. In the Reply, Petitioner has argued for the first time that the D.C. Circuit Court of Appeals has adopted Petitioner's interpretation of 40 C.F.R. § 270.10(l) that EPA is precluded from requiring a second Site-specific Risk Assessment ("SSRA") at a Resource Conservation and Recovery Act ("RCRA") permitted facility unless there has been a change in the physical conditions at the facility or surrounding area. This argument has been reiterated in the *Amicus Curie* brief ("*Amicus* Brief") filed in this matter by the Cement Kiln Recycling Coalition ("*Amicus*"). The D.C. Circuit simply has not adopted nor has expressed statements in support of the Petitioner's and *Amicus*' incorrect interpretation of the regulations governing RCRA permitting SSRAs, and what statements the D.C. Circuit has made with respect to the regulations in question have been completely mischaracterized by the parties to fit their argument.

In addition, Petitioner has raised new arguments concerning the relative burdens of persuasion between the Region and Petitioner in this matter, as well as EPA's consideration of information Petitioner submitted to challenge EPA's judgments with respect to applicability of bioaccumulation factors (BAFs) and fish consumption rates used in the Region's SSRA that supports the inclusion of the annual mercury feed rate limit in final permit for ESSROC. Petitioner makes incorrect statements concerning EPA's actions in the risk assessment process and misrepresents isolated passages in EPA's guidance to bolster its arguments.

This Surreply Brief responds to these new arguments, and thus further shows that Petitioner has not met its burden to establish that the Region was clearly erroneous with any finding of fact or conclusion of law made with respect to its final permit decision.

ARGUMENT

I. The D.C. Circuit has not concluded that permitting authorities are precluded from requiring a second SSRA unless there is a physical change to the facility or site conditions.

In tacit recognition that the words of the regulation fail to support their claim, the Petitioner and *Amicus* argue, based on selective quotes from a D.C. Circuit case, *Cement Kiln Recycling Coalition v. EPA*, 493 F.3d 207 (D.C. Cir. 2007) ("*CKRC*"), that EPA's interpretation of § 270.10(l) directly conflicts with contemporaneous representations made to the court, and with the court's conclusion in that case. According to these parties in their Reply and *Amicus* Briefs, respectively, EPA previously interpreted the regulation to authorize a subsequent SSRA only in situations where a facility's practices or the surrounding environment have changed since the last permit issuance. It is certainly accurate that EPA described these as examples of the kinds of circumstances in which a subsequent risk assessment might be necessary under 40 C.F.R. § 270.10(l)(viii). However, at no time did EPA or the court conclude that those represented the only circumstances covered by § 270.10(l)(viii). A close examination indicates no inconsistency between EPA's current actions and either its past statements or the *CKRC* court's decision.

In *CKRC*, the issue before the D.C. Circuit was whether 40 C.F.R. § 270.10(l) was so vague that it failed to constrain EPA's discretion at all. *See CKRC*, 493 F.3d at 218. That was the issue the court addressed, rather than the extent of the circumstances under which EPA could require a second SSRA. *See Id.* at 218-220. The court upheld the regulation, concluding that,

taken as a whole, § 270.10(l) imposes a sufficiently concrete standard against which to judge a permit writer's exercise of discretion. *See Id.* at 221 ("We conclude that the regulation establishes an identifiable standard. The first eight factors listed in the regulation are more than sufficient to guide the type of information that can be required of a permit applicant."). This is hardly a conclusion that EPA is restricted to the examples presented to the court regarding the application of that standard, or a conclusion that EPA cannot require corrections to a SSRA or require a second SSRA be performed without showing a physical change occurred at the plant or surrounding area.

Consistent with its representations in that case, EPA continues to believe that 40 C.F.R. § 270.10(l) effectively "cabins" a permit writer's discretion. *See* 493 F.3d at 220. To require a SSRA (whether an update of a previous SSRA or an initial assessment), the permitting authority must support the request by providing the basis for its conclusion that compliance with the Hazardous Waste Combustor ("HWC") Maximum Available Control Technology ("MACT") standard under 40 C.F.R. Part 63, Subpart EEE may not be sufficiently protective based upon consideration, as appropriate, of one or more of the regulation's nine factors. *See* 70 Fed. Reg. 59,402, 59,509 ("The commenter apparently misunderstands that the factors were not intended to function as stand-alone criteria for requiring an SSRA…This is an incorrect reading of EPA's proposed regulation. Rather the factors were always intended to function as considerations that might be relevant to the determination of whether the MACT was sufficiently protective.").

The record shows that the Region did exactly that. Citing to 40 C.F.R. §§ 270.10(l)(i), (ii), (v), and (viii), EPA explained that: a portion of the SSRA needed to be redone because previous risk assessments did not include an evaluation of mercury dry vapor deposition; and, given that mercury has been detected in ESSROC's stack emissions and the facility is located 1.6

miles from lakes used and promoted for public fishing, EPA was concerned that a significant pathway in the fate and transport of mercury had been omitted. *See* Letter from Jae Lee, U.S. EPA Region 5, to Corey Conn, ESSROC Cement Co., regarding "Risk Assessment Update Request," Jan. 22, 2009 (EPA Resp. Attach. 5). In the absence of information on this pathway, EPA was concerned that the MACT emission standards may not be sufficiently protective. Neither the regulation nor the D.C. Circuit requires more.

Nor, as Petitioner and *Amicus* suggest, did the D.C. Circuit's decision rest on a definitive catalogue of all possible "conditions" covered by § 270.10(l)(viii), or of all circumstances under which a subsequent risk assessment would ever be necessary. It is clear even from the parties' selective quotations of EPA statements that EPA never purported to make a definitive statement about the circumstances under which risk assessments would be necessary. The clearest example of this appears in the following quotation from the oral argument transcript, in which the United States explained that

> "EPA didn't try to list every species of information that would be required, it couldn't. And so, you have to have these kind of general types of factors and standards,..."

See Amicus Br. at 13.

Further, all of the parties' recitations of the quotations of the rule preamble that were cited in the CKRC decision merely do one of the following: (1) reiterate the standard in the regulation; (2) express EPA's belief that the MACT standard would be adequately protective at most facilities; (3) clearly state that EPA was only providing "examples" of circumstances where a SSRA may be necessary; or (4) otherwise reach only a qualified conclusion. *E.g.,* Reply Br. at 3-4, *citing* 70 Fed. Reg. at 59,504 ("The Agency <u>generally does not expect</u> that facilities that have conducted risk assessments will have to repeat them ... Instances where a facility may need to repeat a risk assessment would be related to changes in conditions that would likely lead to

increased risk. *For example*, if the only changes at a facility relate to the exposed population (a new housing development is constructed within a few square miles of the source), what was once determined to be protective under a previous risk assessment may now be beyond acceptable levels. *Another example* would be.... ")(emphasis added); *Amicus* Br. at 9, *citing* 70 Fed. Reg. at 59,507 ("we maintain our *assumption* that SSRAs *generally* represent a one-time cost unless a facility significantly changes its operations or if receptors change such that an increase in risk is anticipated as a result.")(emphasis added).[1]

Most important, the D.C. Circuit itself did not establish a catalogue of limited conditions under which a second SSRA could be required. As the court noted, "[h]ence *most* information requests will be targeted at determining whether there has been a change in circumstances since the previous permitting process." 493 F.3d at 221 (emphasis added). The court did not elaborate further on what would constitute a change in circumstance. *Id.* Petitioner and *Amicus* clearly wish the regulation stated, "given any changes in facility or site conditions." But the simple fact is that those are not the words of the regulation. The word "conditions" encompasses a variety of circumstances and changes—including evolution of the science or of scientific assessments. The same is true of the language the D.C. Circuit used to characterize its understanding of [§ 270.10(l)(viii)]. *See CKRC*, 493 F.2d at 221 (characterizing this provision as relating to a "change in circumstances" since the previous permitting process)(emphasis added).

Further it is clear from every one of the quoted statements that, irrespective of EPA's predictions or assumptions, the regulation granted permit writers the authority to make decisions based on their assessment of the facts before them. And it is equally clear that the D.C. Circuit

[1] These statements clearly assume—which would generally be reasonable--that a prior SSRA would in fact have assessed all of the relevant risks, albeit that assumption proved to be inaccurate in this case.

upheld the regulation with that full understanding. *See, e.g.*, 493 F.2d at 223-224 ("Moreover, EPA has reasonably explained why it chose the case-by-case approach....We find nothing unreasonable about EPA's refusal to interpret RCRA to require a national standard for ordering an SSRA or granting a permit.").

Finally, Petitioner misstates the D.C. Circuit's holding with respect to the § 270.10(l)(ix) factor "such other factors as may be appropriate." Pet. Br. at 4-5. The Court held that this provision is to be interpreted by reference to the overall standard established in § 270.10(l)—i.e., that any information must be 'necessary to determine whether additional controls are necessary to ensure protection and human health and the environment' and 'relevant to the potential risk from a hazardous waste combustion unit." 493 F.3d at 221. This is exactly the position articulated in EPA's Response. EPA Resp. Br. at 12 ("The risks associated with the dry deposition of the mercury detected in its stack emissions are directly 'relevant to the potential risk from a hazardous waste combustion unit,' which is the basis set out in the regulation for determining whether compliance with the MACT is adequately protective. 40 C.F.R. § 270.10(l)(10). The absence of any assessment of these risks is equally relevant to such a determination, and thus would indisputably be an appropriate factor, within the meaning of subparagraph (ix)." *sic*). The Court also noted that any information sought under factor (ix) "must be 'similar in nature'" to the information identified under the first eight factors. 493 F.3d at 221. Again, this is fully consistent with the position articulated in EPA's earlier pleading.

Accordingly, the Board should reject the parties' attempt to convert qualified statements about assumptions, expectations, examples, generalizations, and predictions into regulatory restrictions. These cannot override the regulation's plain language.

II. Petitioner mischaracterizes both the Region's and its own burdens in this appeal

Petitioner asserts that a permitting authority has a "high burden" that it must meet to support its determination under 40 C.F.R. § 270.10(l) that the MACT standards alone are not protective of human health or the environment for a given hazardous waste combustion unit. The authority Petitioner has cited for this proposition is a statement in the preamble: "Moreover, the language of § 270.10(l) makes clear that the onus initially falls on the permitting authority to identify the basis for its conclusion that the MACT standards may not be sufficiently protective." 70 Fed.Reg. 59,402, 59,514-59,515 (Oct. 12, 2005). The Region agrees it has the obligation to identify the basis for concluding the MACT standards may not be sufficiently protective, and in fact has done so, but disagrees with Petitioner's claim that this regulation establishes a "high" burden on EPA that effectively modifies the Petitioner's burden in challenging permit conditions under 40 C.F.R. § 124.19.

With respect to Petitioner's claim that 40 C.F.R. § 270.10(l) increased EPA's burden in defending its permit decisions, and thus decreased its burden in challenging those decisions, EPA made clear that the regulation was intended to operate within the normal permitting procedures established in Part 124, including the procedures for challenging permit conditions. *See, e.g.,* 70 Fed. Reg. at 59,507-59,508 and 59,514-59,515. At no point did EPA indicate any intent to revise the Part 124 provisions, or to otherwise change the standards applicable to the Board's review of EPA's permit decisions. *See Id.* As previously discussed in EPA's Response Brief, under those regulations, the Board reviews Agency permitting decisions based on whether the petitioner has shown that the challenged decision: 1) is based upon a "clearly erroneous" finding of fact or conclusion of law; or 2) involves an "exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. §

124.19(a)(4); *See also In re Pio Pico Energy Center*, PSD Appeal Nos. 12-04 through 12-06, slip.op. at 9 (EAB Aug. 2, 2013), EPA Resp. Br at 7-9. In any appeal from a permit under Part 124, the Petitioner bears the burden of demonstrating that review is warranted. *See Pio Pico,* slip.op. at 11-13. With respect to technical judgments made by the Agency, the Board has stated that petitioners "must provide compelling arguments as to why the Region's technical judgments or its previous explanations of those judgments are clearly erroneous or worthy of discretionary review. *In re Ash Grove Cement Co.,* 7 E.A.D. 387, 404 (1997) (declining Board review of risk assessment methodology challenges in a RCRA permitting matter where EPA conducted an SSRA to establish site-specific permitting conditions under the RCRA omnibus authority), *remanded in part on other grounds.*

When evaluating a challenged permit decision for clear error, the Board examines the administrative record that serves as the basis for the permit to determine whether the permit issuer exercised his or her "considered judgment." *See Pio Pico*, slip.op. at 10 ; *Ash Grove*, 7 E.A.D. at 417-8. The permit issuer must articulate with reasonable clarity the reasons supporting its conclusion and the significance of the crucial facts it relied upon when reaching its conclusion. *See Id.* As a whole, the record must demonstrate that the permit issuer duly considered the issues raised in the comments and ultimately adopted an approach that is rational in light of all the information in the record. *See Pio Pico*, slip. op. at 10. On matters that are fundamentally technical or scientific in nature, the Board typically will defer to a permit issuers' technical expertise and experience, as long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record. *See Id.; Ash Grove*, 7 E.A.D. at 403 ("Risk assessment is a multi-disciplinary and technical exercise, and consequently, most of the petitioners' criticisms are technical in nature. The Board traditionally assigns a heavy burden to

persons seeking review of issues that are quintessentially technical."). None of these were amended by 40 C.F.R. § 270.10(l).

With respect to the technical judgments made by the Region with respect to the SSRA and the resulting permit conditions, Petitioner has challenged only two aspects, the Region's chosen BAF and fish consumption rate used in the SSRA. As shown by the SSRA, the administrative record, the Region's response to comments, and its Response to the Petition, the Region has exercised its considered judgment with respect to the specific technical issues Petitioner has challenged and has met its burden to demonstrate in the record that the Region exercised considered judgment in making its permitting decision that was rational in light of all the information in the record. By contrast, as has been discussed by the Region's Response to the Petition and in this brief, Petitioner has not met its burden to establish that the technical judgments the Region reached in making its permitting decision were clearly erroneous or otherwise worthy of discretionary review.

III. Petitioner's new arguments challenging the Region's technical judgments mischaracterize the Region's actions in the SSRA process and EPA guidance.

A. Petitioner's allegation that the Region failed to communicate and be transparent with ESSROC during the SSRA process is false.

Petitioner has asserted that EPA failed to sufficiently communicate and consult with Petitioner during the development of the SSRA. This is belied by Petitioner's Petition itself, which acknowledged "...ESSROC corresponded with EPA for several years regarding the site specific risk assessment, including the appropriate fish consumption rate", as well as an exhibit attached to the Petition, an email dating back to September 9, 2011, wherein ESSROC's consultant references coordination between ESSROC and EPA "throughout" EPA's development of the SSRA. *See* Pet. Br. at 12 and Pet. Exh. 2, respectively. ESSROC was

afforded extensive opportunities to provide information for EPA to consider for evaluating the appropriateness of the SSRA well before the proposed permit went out for public comment. Further, during the public comment period on the draft permit, ESSROC submitted information in its comments in support of the use of alternative factors for mercury bioaccumulation factor and fish consumption rate in the SSRA. EPA duly considered this information, and in light of all the information in the record, rationally exercised its considered judgment to determine that the mercury bioaccumulation factor and fish consumption rate factors it had used were appropriate for the ESSROC SSRA and that further risk assessment evaluation was not warranted.

B. Respondent's mischaracterization of EPA guidance fails to demonstrate that the Region's consideration of the BAF parameter in the SSRA was clear error.

In both the Region's response to comments on the draft permit and in its Response to the Petition for Review regarding the appropriate application of the HHRAP BAF in the SSRA, the Region explained how the HHRAP BAF, which is based upon lake data, is more representative of the site-specific receptors (the France Park lakes) being analyzed under the SSRA than the Draft National BAF, which is a BAF based upon a combination of lake and river data. *See Response to Comments on the Draft Permit for ESSROC Cement Corp.* (Jun, 5, 2013) at 15-20 ("Response to ESSROC Comments")(Part of ESSROC Final RCRA Permit, EPA Resp. Attach. 1); EPA Resp. Br. at 15-20. Petitioner counters with citing an isolated passage it had not previously referred to that is from the January 2011 document "Water Quality Criterion for the Protection of Human Health: Methylmercury" to assert that EPA has reached an "updated conclusion"[2] that there is no significant difference in the BAFs between rivers and lakes. Reply

[2] In its Reply, Petitioner continues to make the spurious claim that the 2010 "Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion" designated the 2001 Water Quality Criterion document as the most current EPA recommendation on the determination of fish tissue methylmercury concentration that supersedes and overrides EPA recommendations provided in the HHRAP or any other risk assessment guidance

Br. at 7. The passage refers to a statistical comparative analysis EPA conducted as part of determining the feasibility of a national default BAF for use in establishing ambient water quality standards for mercury. *See* Appendix A to *Water Quality Criterion for the Protection of Human Health: Methylmercury* (Jan. 2001)("2001 Methylmercury Water Quality Criterion – Appendix A")(EPA Resp. Attach. 13). Nowhere in the 2001 Methylmercury Water Quality Criterion document does it state that BAFs derived from a combination of lake and river data are just as representative of mercury bioaccumulation in lakes as using BAFs derived from lake data alone. Moreover, nowhere in this document does it state that lake BAFs are indistinguishable from river BAFs when used in a human health risk assessment. Certainly, this matter before the Board shows this is not the case. It clearly makes a difference in human health risk assessment whether a BAF based on lake data alone or BAF based on a combination of lake and river data are used, since the differences in data sets between lakes and rivers affects the BAF value depending on which data set, or combination thereof, the BAF is calculated from. The Petitioner has stated in its comments on the draft permit that using the Draft National BAF (derived from a combination of lake and river data) over the HHRAP BAF (derived from lake data alone) results in a 58% reduction of the Hazard Quotient in the SSRA. *See* Response to ESSROC Comments at 8-9 (EPA Resp. Attach. 1). The differences in the BAFs are driven by the source of the data, and there is a difference in methylmercury accumulation observed in data trends between lakes and rivers, as noted by 2001 Water Quality Criterion document and not disputed by Petitioner. *See* 2001 Methylmercury Water Quality Criterion – Appendix A at A-17. If lake and river BAFs were the really the same for purposes of risk assessment, as Petitioner is asserting, there would be no reason to challenge the use of the HHRAP BAF over the Draft National BAF, since they,

---

documents. As explained in the Response to the Petition for Review, there is absolutely no support for this claim. *See* EPA Resp. Br. at 15-17.

under Petitioner's logic, would be the same. Thus, Petitioner's argument that this passage undercuts the Region's considered judgment to use the HHRAP BAF fails to have any credence.

C. The Region appropriately and rationally exercised its considered judgment in light of all available site-specific information in applying the HHRAP fish consumption rate in the SSRA.

In its Reply Brief, Petitioner asserts that the default values in the HHRAP are meant only to be used as "starting point" in conducting a risk assessment, and that if a risk assessment analysis shows unacceptable risk using the default values, the risk assessor has a "mandatory" duty to conduct site-specific data-gathering efforts to test whether the default values are appropriate. Reply Br. at 8-10. Petitioner cites nothing to support the existence of such a mandatory duty. Certainly, neither the non-binding HHRAP nor any other EPA guidance could, by definition, mandate EPA to establish site-specific values to replace the use of its recommended default values in conducting any risk assessment *See CKRC*, 493 F.3d at 227 ("We see nothing on the face of the HHRAP to suggest that it is binding.").

Moreover, as described in the 2012 SSRA document, Region 5 did consider and include a variety of site-specific information in conducting its risk assessment (e.g., site-specific information associated with air dispersion modeling). *See* 2012 Screening-Level Human Health Risk Assessment, ESSROC Cement Co., Logansport, Ind. (Jun. 19, 2012)("2012 ESSROC SSRA")(EPA Resp. Attach. 7). Further, the 2012 SSRA document notes that the Region's consideration of key exposure modeling assumptions did include research for available waterbody and watershed parameters using phone calls to France Park employees and online searches. *See* 2012 ESSROC SSRA at 8. As indicated in EPA's response to Petitioner's comment on this issue, EPA could not find any reliable site-specific information available about the fish consumed from France Park lakes. *See* Response to ESSROC Comments at 11.

Therefore, EPA used the default consumption rate values from the HHRAP, which represent the average amount of home-caught fish eaten per day by people who fish in a local waterbody and eat at least some of the fish they catch, which was derived from data collected in the *1987-1988 USDA National Food Consumption Survey*. *See Id.* The Region did review and consider site-specific information regarding fish consumption submitted by Petitioner and the results of the Region's consideration of the information was articulated in its response to comments. *See Id.* at 10-12. The Region rationally exercised its considered judgment in light of all the information in the record that the information submitted by ESSROC did not warrant a reassessment of the use of the HHRAP fish consumption rate for the SSRA.

With respect to Petitioner's contention that the Region "ignored" the fish consumption rate used in the 2003 SSRA, Petitioner never identified in its comments that the 2003 SSRA fish consumption rate should be considered as an alternative to the HHRAP fish consumption rate, and therefore is precluded from raising this as a reason to challenge the Region's permitting decision now. *See* 40 C.F.R. § 124.19(a)(4)(ii). Moreover, the "site-specific" information that Petitioner says was reflected in the 2003 SSRA fish consumption rate did not include any data from the France Parks lakes. Thus, the Reply Brief's statement that the "2003 SSRA account for the France Park lakes with site-specific information" is inaccurate and misleading.

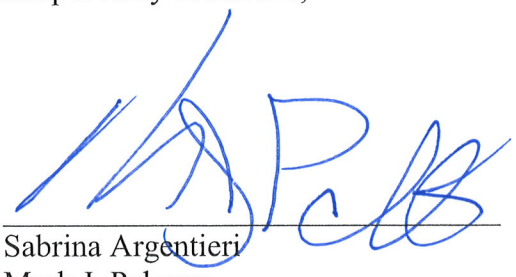
Finally, although the HHRAP does state that data-gathering efforts can reduce limitations and uncertainties in the risk assessment process and increase confidence in the risk assessment results, at some point the permitting authority needs to conclude the risk assessment process and make a decision whether the MACT standards alone are not protective of human health and the environment. This is especially important when the Region has before it a risk assessment demonstrating that unacceptable risk to human health exists. Here the Region's SSRA

incorporated site-specific data where available, sought data collection where it determined to be appropriate (e.g. for mercury air dispersion modeling), and, where it used default parameters from the HHRAP, assessed the appropriateness of the defaults for the site-specific conditions associated with the ESSROC facility, and determined that the defaults were appropriate. Region 5 consulted with and obtained feedback from ESSROC during the risk assessment development process and the information ESSROC provided was duly considered and addressed both during the risk assessment development process and in the permit public comment period afterward. Because Petitioner has not demonstrated that the Region's decision to establish site-specific mercury limits based on the SSRA conducted was clearly erroneous, the Board should decline review and let the final RCRA permit stand.

CONCLUSION

The new arguments Petitioner makes in its Reply Brief concerning the *CKRC* decision's impact on the Region's decision to conduct an SSRA, and the Region's application of BAF and fish consumption rate values in the SSRA are unsupportable and mischaracterize what the regulations require and EPA guidance provides. Based on the foregoing, Petitioner fails to meet the threshold procedural burden or its burden on merit of demonstrating that the Region's decision was based on a clearly erroneous finding of fact or conclusion of law, or included an exercise of discretion or an important policy consideration which the Board should, in its discretion, review as required by 40 C.F.R. § 124.19. Region 5 therefore respectfully requests that the Board deny the Petition for Review.

Respectfully submitted,



Dated: September 6, 2013

Sabrina Argentieri
Mark J. Palermo
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Tel: (312) 353-5485; (312) 886-6082
Fax: (312)-385-5527
Email: argentieri.sabrina@epa.gov;
palermo.mark@epa.gov

OF COUNSEL:

Laurel Celeste
Senior Attorney
U.S. EPA
Washington, DC
(202) 564-1751

STATEMENT OF COMPLIANCE WITH WORK LIMITATION

I hereby certify that this EPA Region 5 Surreply Brief, including all relevant portions, contains less than 7,000 words.

Dated: September 6, 2013

Mark J. Palermo
Associate Regional Counsel