

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

In Re:	:	
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	:	Permit Appeal
Penneco Environmental Solutions, LLC	:	UIC 24-02
	:	
	:	
UIC Permit No. PAS2D702BALL	:	
	:	
	:	
	:	

**MOTION FOR LEAVE TO FILE SUR-REPLY TO PETITIONERS’ OMNIBUS REPLY**

On May 22, 2024, the Petitioners in this Appeal filed their Omnibus Reply to Region 3’s and Penneco Environmental Solutions’ Responses to the Petition (“Reply”). The Region seeks the Board’s permission to file a Sur-Reply in response. The Reply makes two new arguments that were not made in the Petition.

The two arguments are as follows:

1. The Region failed to follow the requirements of two Executive Orders issued by President Biden that require Federal Government Agencies to account for Environmental Justice factors in carrying out their duties. Reply at 9–12.
2. The Region did not make the administrative record available during the public comment period. Reply at 14–15.

The Petitioners did not make these arguments in the Petition and only make them now in their Reply. 40 C.F.R. § 124.19(c)(2) restricts replies by prohibiting them from raising new arguments or issues. Where new arguments are raised in opposing reply briefs, the Board, as a

remedy, typically allows sur-replies. *In re Essroc Cement Corp., RCRA Appeal No. 13-03* at 1 (EAB Sept. 25, 2013).

Additionally, the Board allows sur-replies where further briefing would assist the Board in resolving disputed claims. Because the Petitioners have raised two new arguments and to fully inform the Board about these arguments, the Region seeks to the Board's approval to file the accompanying Sur-Reply.

The undersigned has contacted counsel for the Petitioners and the Permittee concerning this motion. Counsel for the Petitioners represents that they oppose this motion. Counsel for the Permittee represents that it supports the motion.

Respectfully submitted,  
/s/ Philip Yeany

*(signed per Revised EAB Order re: Electronic Filing  
in non-Part 22 Proceedings, 8/12/13)*

Philip Yeany  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
Phone: (215) 814-2495  
Email: Yeany.Philip@epa.gov

Of Counsel:  
Katie Spidaleri  
Water Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
William Jefferson Clinton North Building  
Office 7308B  
202-564-4138  
Email: [Spidaleri.Katie@epa.gov](mailto:Spidaleri.Katie@epa.gov)