

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

In re:	)	
	)	
Palmdale Energy, LLC	)	
Palmdale Energy Project	)	PSD Appeal No. 18-01
	)	
Permit No. SE 17-01	)	
	)	

**ORDER GRANTING MOTION**  
**FOR LEAVE TO FILE REPLY**

On June 29, 2018, the Center for Biological Diversity, representing itself, the Desert Citizens Against Pollution, California Communities Against Toxics, and the Sierra Club (collectively, “Petitioners”), filed a motion for leave to file a reply brief in the above-captioned matter. In Prevention of Significant Deterioration and other new source permit appeals, the Environmental Appeals Board (“Board”) “appl[ies] a presumption against the filing of a reply brief.” 40 C.F.R. § 124.19(c)(1). The Board established that presumption “to facilitate [the] expeditious resolution of [New Source Review] appeals, while simultaneously giving fair consideration to the issues raised in any given matter.” Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits at 2 (EAB Mar. 27, 2013) (“Standing Order”). The regulations provide, however, that a petitioner may seek leave of the Board to file a reply to a response. 40 C.F.R. § 124.19(c)(1). “A petitioner seeking leave to file a reply brief must satisfy a high threshold to overcome this presumption by stating with particularity the arguments to which the Petitioner seeks to respond and the reasons the Petitioner believes it is both necessary to file a reply to those arguments \* \* \* and how those reasons overcome the presumption in the Standing Order.” *In re Pio Pico Energy Ctr.*, 16 E.A.D. 56, 70-71 (EAB 2013) (internal quotation marks and citation omitted), *review voluntarily dismissed sub nom.*

*Helping Hand Tools v. EPA*, No. 14-71267 (9th Cir. June 17, 2014). A party may overcome that presumption by demonstrating that the reply responds directly to arguments made in a response brief to which the petitioner has not previously had the opportunity, and that allowing the reply brief would not otherwise frustrate the presumption's purpose. *In re Energy Answers Arecibo, LLC*, 16 E.A.D. 294, 305 (EAB 2014), *review dismissed sub nom. Sierra Club de P.R. v. EPA*, 815 F.3d 22 (D.C. Cir. 2016).


Petitioners state that Region 9 of the U.S. Environmental Protection Agency ("Region") filed a response brief that contains new arguments that Petitioners have not previously had the opportunity to address. They seek an opportunity to address and respond to those new arguments in the Region's response.

Upon review of Petitioners' motion and tendered reply, the Board concludes that Petitioners satisfy the standard for filing a reply brief in this matter. Thus, for good cause shown, the Board **GRANTS** Petitioners' motion to file a reply brief.<sup>1</sup>

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: July 2, 2018

By:   
Aaron P. Avila  
Environmental Appeals Judge

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<sup>1</sup> Petitioners' motion fails to include a representation that Petitioners sought the Region's position on their motion or the Region's position. *See* 40 C.F.R. § 124.19(f)(2). Petitioners are reminded to comply with that requirement in any future motion they may file. The Board nonetheless finds it appropriate to act on Petitioners' motion at this time because the Board endeavors to resolve these sorts of petitions expeditiously. *See id.* § 124.19(n) ("[T]he Board may relax or suspend the filing requirements prescribed by th[e] rules or Board order.").

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Motion for Leave to File Reply** in the matter of *Palmdale Energy, LLC*, PSD Appeal No. 18-01, were sent to the following persons in the manner indicated:

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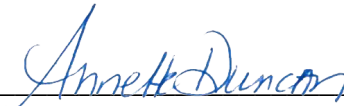
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