

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

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In re: )  
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Florence Copper, Inc. ) UIC Appeal No. 17-03  
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UIC Permit No. R9UIC-AZ3-FY11-1 )  
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**PERMITTEE FLORENCE COPPER, INC.’s MOTION  
FOR LEAVE TO FILE SURREPLY**

Permittee Florence Copper, Inc. (“**FCI**”) respectfully moves for leave to file the attached Surreply to Petitioners’ Consolidated Reply to Responses of EPA Region 9 and Florence Copper, Inc. (“**Reply**”). The Surreply responds to a misleading description, in the Reply, of the nature of the permit proceeding in this matter relative to applicable rules.

The Environmental Appeals Board has discretion to grant requests to file surreply briefs and typically does so where further briefing would assist the Board in resolving disputed issues. *See, e.g., In re ESSROC Cement Corp.*, RCRA Appeal No. 13-03, at 1 (EAB Sept. 25, 2013); *In re Arcelor Mittal Cleveland, Inc.*, NPDES Appeal No. 11-01, at 1 (EAB Dec. 9, 2011); *Keene Wastewater Treatment Plant*, NPDES Appeal No. 07-18, at 11 (EAB Mar. 19, 2008); *In re D.C. Water & Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10, 07-11, 07-12, at 1-2 (EAB Aug. 3, 2007); *see also* Environmental Appeals Board Practice Manual, at 49 (August 2013) (stating the Board may upon motion allow the filing of a surreply brief).

In accordance with 40 C.F.R. § 124.19(f)(2), FCI contacted attorneys for the other parties regarding whether they concur or object to this motion. Region 9 indicated that it concurs with the motion. Both Petitioners indicated that they object to the motion.

Dated: May 1, 2017

Respectfully submitted,



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George A. Tsiolis  
Attorney at Law  
351 Lydecker Street  
Englewood, NJ 07631  
(201) 408-4256  
gtsiolis@nj.rr.com

Rita P. Maguire, Esq.  
Maguire, Pearce & Storey, PLLC  
2999 North 44th Street, Suite 650  
Phoenix, AZ 85018  
(602) 277-2195  
rmaguire@azlandandwater.com

*Attorneys for Florence Copper, Inc.*

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**PERMITTEE FLORENCE COPPER, INC.’s SURREPLY**

Permittee Florence Copper, Inc. (“**FCI**”) submits this surreply:

On page 6 of Petitioners’ April 24, 2017 Consolidated Reply to the Responses of EPA Region 9 and Florence Copper, Inc. (“**Reply**”), Petitioners state as follows:

FCI has not here applied for a “replacement permit or permit modification” similar to the normal permit modifications often sought by permittees under any permit program. Rather, FCI sought a transfer of an existing UIC permit, which Region 9 rejected in favor of revoking the existing permit and requiring an entirely new permit application because of significant changed circumstances in the 20 years since the original permit was issued.

(Emphasis added.) This statement is a misleading description of the nature of the permit proceeding in this matter relative to applicable rules.

Region 9 had only two ways it could grant license to FCI to conduct the pilot test activities that were ultimately authorized by UIC Permit No. R9UIC-AZ3-FY11-1 (“**Permit**”): (i) transfer and, if necessary, modify the existing UIC permit; or (ii) revoke and reissue the UIC permit. *See* 40 C.F.R. §§ 144.38 and 144.39 (**Attachment 1**); *see also* 40 C.F.R. § 124.5(a) (“Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either

at the request of any interested person (including the permittee) or upon the Director’s initiative.”); 40 C.F.R. §§ 144.3 and 124.2(a) (“When there is no approved State or Tribal program, and there is an EPA administered program, ‘Director’ means the Regional Administrator.”). Region 9’s rejection of FCI’s application for a minor modification and transfer of the existing permit in favor of revoking it and issuing a replacement permit was entirely “normal” under the rules—it is anticipated by the rules. Moreover, Petitioners’ have failed to demonstrate that it is “normal” for permittees to seek modifications of UIC permits but *not* normal for permittees to seek transfers of UIC permits or for Regions to revoke and reissue UIC permits. That 40 C.F.R. §§ 144.38 and 144.39 address all these scenarios is evidence contrary to Petitioners’ argument. 40 C.F.R. § 144.39 expressly provides that “[i]f a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term,” but makes no reference to a pre-existing aquifer exemption.

Dated: May 1, 2017

Respectfully submitted,



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George A. Tsiolis  
Attorney at Law  
351 Lydecker Street  
Englewood, NJ 07631  
(201) 408-4256  
gtsiolis@nj.rr.com

Rita P. Maguire, Esq.  
Maguire, Pearce & Storey, PLLC  
2999 North 44th Street, Suite 650  
Phoenix, AZ 85018  
(602) 277-2195  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the attached **PERMITTEE FLORENCE COPPER, INC.’s MOTION FOR LEAVE TO FILE SURREPLY**, together with its attached **PERMITTEE FLORENCE COPPER, INC.’s SURREPLY**, to be served by e-mail and first class mail upon the persons listed below.

Dated: May 1, 2017



Alexa Engelman  
Office of Regional Counsel  
EPA Region 9 (MC ORC-2)  
75 Hawthorne St.  
San Francisco, CA 94105  
Telephone: (415) 972-3884  
Fax: (415) 947-3570  
Email: [Engelman.Alexa@epa.gov](mailto:Engelman.Alexa@epa.gov)

Ronnie P. Hawks  
[rph@jhc-law.com](mailto:rph@jhc-law.com)  
Russell R. Yurk  
[rry@jhc-law.com](mailto:rry@jhc-law.com)  
Jennings, Haug & Cunningham, L.L.P.  
2800 N. Central Avenue, Suite 1800  
Phoenix, AZ 85004-1049  
Telephone: (602) 234-7800  
Fax: (602) 277-5595  
*Attorneys for SWVP-GTIS MR, LLC*

Christopher Kramer  
[CKramer@gustlaw.com](mailto:CKramer@gustlaw.com)  
Barbara U. Rodriguez-Pashkowski  
[bpashkowski@gustlaw.com](mailto:bpashkowski@gustlaw.com)  
GUST ROSENFELD P.L.C.  
One E. Washington, Suite 1600  
Phoenix, AZ 85004  
Telephone: (602) 257-7422  
Fax: (602) 254-4878  
*Attorneys for the Town of Florence, Arizona*