

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

**In re:** )  
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**ArcelorMittal Cleveland Inc.** )  
 ) **NPDES Appeal No. 11-01**  
 )  
**Permit No. OH0000957** )  
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**EPA/REGION 5'S OPPOSITION TO ARCELORMITTAL CLEVELAND'S REQUEST  
TO SUPPLEMENT ITS REPLY BRIEF IF FILING OF SUR-REPLY IS ALLOWED**

Region 5 of the U.S. Environmental Protection Agency hereby opposes as premature the request of ArcelorMittal Cleveland Inc., to supplement the Reply Brief that ArcelorMittal filed with the Environmental Appeals Board ("Board") on November 4, 2011, with additional information it expects to receive from EPA in response to a pending FOIA request, if the Board grants EPA/Region 5's pending "Motion for Leave to File a Sur-Reply Brief." ArcelorMittal included this request in the final sentence of its "Brief in Opposition to U.S. EPA Region 5's Motion for Leave to File Surreply," filed by ArcelorMittal with the Board on November 21, 2011.

ArcelorMittal did not raise the pending FOIA request as an issue in the Informal Appeal that it filed with the Board on August 26, 2011, but first introduced this issue in its Rely Brief filed on November 4. EPA/Region 5 subsequently filed its pending "Motion for Leave to File a Sur-Reply Brief" on November 10, 2011, which includes the FOIA request as among the issues that EPA/Region 5 proposes to address in a sur-reply. EPA/Region 5 expects to argue in detail, if given the opportunity, the following: i) that the Board should not address the pending FOIA request as an issue in this matter because it was not first raised in the Informal Appeal filed on August 26, 2011; ii) that FOIA requests in general and ArcelorMittal's FOIA request in particular are not within the scope of the Board's review authority in this matter; and iii) that the Board should deny any request by ArcelorMittal to re-open the record for EPA/Region 5's decision to deny ArcelorMittal's modification request under § 301(g) of the Clean Water Act in

order to supplement it with documents received from EPA in response to the pending FOIA request.

EPA/Region 5 respectfully requests that the Board allow EPA/Region 5 the opportunity to fully brief this issue, as requested in EPA/Region 5's Motion For Leave To File A Sur-Reply Brief, before the Board considers any request by ArcelorMittal to supplement its November 4 Reply Brief as it pertains to this issue or to supplement the record with information that it expects to receive with EPA's response to its FOIA request.

EPA/Region 5's pending Motion for Leave to File a Sur-Reply Brief adequately describes the remaining issues that Region 5 proposes to address in a sur-reply brief and the reasons for addressing them. Accordingly, EPA/Region 5 respectfully requests that the Board grant EPA/Region 5's motion as to all issues included therein.

Respectfully submitted,

**Counsel for EPA/Region 5**

11/25/11  
Date

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## CERTIFICATE OF SERVICE

I certify that on this 23<sup>rd</sup> day of November, 2011, I sent copies of "EPA/Region 5's Opposition to ArcelorMittal Cleveland's Request to Supplement its Reply Brief if Filing of Sur-Reply is Allowed," dated November 23, 2011, in the following manner to the addressees listed below:

PDF copy, by CDX

Environmental Appeals Board

Copies by Email  
And UPS Next Day Air:

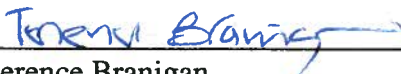
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