

Motion at 2. Region 1 respectfully opposes this Motion on the grounds set forth below.

The EAB has explained that:

[a]fter the permitting authority's brief has been filed, the EAB normally does not require further briefing before issuing a decision whether to grant review. On occasion, however, petitioners who believe that the permitting authority's response requires a reply may, upon motion explaining why a reply brief is necessary, be granted leave to file a reply brief.

EAB Practice Manual, § III.D.5. Thus, Petitioners in NPDES permit appeals before the Board under the procedures of 40 C.F.R. Part 124 are not permitted reply briefs as of right, but the Board has discretion to permit a reply brief (and a sur-reply brief) if it deems it necessary in a particular case. *See also* EAB Practice Manual, § III.D.1 (“[s]ince the EAB frequently issues a decision that is dispositive of the matter based on the petitioner’s brief and the responses thereto, petitioners are advised that a petition for review should set forth, in detail, all of the issues and arguments in their favor.”).


Here, Petitioner states that it should be permitted a reply brief because it believes that it will assist the Board to receive Petitioner’s views regarding Region 1's response to the Petition for Review. *Motion at 2.* Petitioner, however, provides no specific reason why a reply brief is necessary and thus provides insufficient grounds to justify the delay and commitment of resources associated with additional submissions in this matter. *See* EAB Practice Manual, § III.D.5. There is every indication that the Petition for Review – which includes a 23-page brief plus a 13-page, single-spaced “Table” of additional arguments, and Petitioner’s Exhibits A and F, which provide still further technical arguments, as well as additional exhibits (although much of the material in the Petitioner’s Table and Exhibits should be stricken from the record on appeal,

as explained in Region 1's Motion to Strike and Opposition to Petitioner's Motion to Supplement the Administrative Record) – and the Region's detailed response to Petitioner's submissions will adequately inform the Board regarding the issues presented in this appeal. As a result, the Region respectfully submits that no reply brief is likely to be necessary or useful in this case.

If, however, the Board determines that a reply brief should be allowed, Region 1 respectfully moves that the Board (a) place reasonable limitations on the length of such reply brief and the time for its submission, and (b) also permit Region 1 to submit a sur-reply brief, subject to reasonable length and time limitations. The Region also requests that any such reply brief be properly restricted to replying to issues fairly raised by Region 1's Response to the Petition for Review. In other words, the reply brief should not be permitted to raise new arguments or attempt to submit new evidence. Similarly, any sur-reply brief should properly be limited to replying to issues fairly raised by Petitioner's reply brief and should not be permitted to raise new arguments or attempt to submit new evidence. Region 1 urges that the reasonable limitations suggested above are appropriate to prevent unnecessary delay and cumulative or otherwise inappropriate argument.

Respectfully submitted by EPA Region 1,

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