

BEFORE THE ENVIRONMENTAL APPEALS BOARD

U.S. ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

In re: ESSROC Cement Corporation)

RCRA Permit No. IND 005 081 542)

Appeal No. RCRA 13-03

**AMICUS CEMENT KILN RECYCLING COALITION'S
STATEMENT IN RESPONSE TO THE REGION'S
MOTION FOR LEAVE TO FILE SURREPLY BRIEF**

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September 17, 2013

Amicus Cement Kiln Recycling Coalition (CKRC) hereby respectfully submits the following Statement in response to the Region's September 6, 2013 "Motion for Leave to File Surreply Brief."

1. The Region's September 6 Motion purports to be a response to the Reply Brief filed by Petitioner ESSROC on August 22, 2013. The Motion makes no reference to the Amicus Brief filed by CKRC on the same date.

2. Yet even a cursory glance at the Region's proposed "Surreply Brief" attached to its Motion shows that at least in significant part, the Region seeks to reply to CKRC's Amicus Brief. *See* Surreply Brief at 1, 2, 4, 5.

3. Yet the Region did not even serve Amicus CKRC with a copy of its Motion and Surreply Brief. The undersigned first learned about the Region's September 6, 2013 filings when Petitioner's counsel forwarded a copy to the undersigned.

4. The Region says the CKRC Amicus Brief tacitly recognizes that "the words of the regulation" fail to support CKRC's argument. Surreply Brief at 2. We strongly disagree. The operative words from § 270.10(l)(1)(viii) are "given any subsequent changes in conditions likely to affect risk." We take these words for their obvious plain meaning and rely on them to support our position. Just as EPA's October 12, 2005 final rule preamble stated, they mean that a second SSRA would not be required "unless a facility changes its operations or if receptors change such that an increase in risk is anticipated as a result." 70 Fed. Reg. at 59707, quoted in CKRC's Amicus Brief at 9.

5. On the other hand, the Region maintains that the regulatory words "changes in conditions" include "changes in science." Region's Response Brief of August 7, 2013 at 11. We submit that on the face of the regulatory words, that is an unreasonable position. But in any

event, as we showed in our Amicus Brief, that position is flatly contradicted by a plethora of preamble statements signed by EPA's Administrator at the time the regulatory words were issued, as well as by representations and arguments EPA's counsel made to the U.S. Court of Appeals for the D.C. Circuit.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'RGS', with a long horizontal line extending from the end of the signature.

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September 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September 2013, I caused to be electronically filed the foregoing Cement Kiln Recycling Coalition's Statement in Response, and caused to be mailed a true and correct copy to the Petitioner and Respondent, addressed as follows:

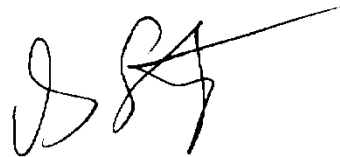
Petitioner

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