

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

_____)	
In re:)	
)	
Wabash Carbon Services, LLC)	UIC Appeal No. 24-01
Vermillion and Vigo, IN)	
Wells CCS#1 and #2)	
)	
Underground Injection Control)	
Permit Nos.: IN-165-6A-0001 and)	
IN-167-6A-0001)	
_____)	

MOTION TO FILE SURREPLY BRIEF

The United States Environmental Protection Agency, (“EPA”) Region 5 (“Region”) respectfully requests that the Environmental Appeals Board (“Board”) grant the Region permission to file the attached surreply brief to respond to the new issues and arguments raised for the first time in Petitioners’ reply brief in violation of 40 C.F.R. § 124.19(c)(2). Petitioners could have raised the issues and arguments contained in their reply in their Petition and chose not to do so, as such they have forfeited those arguments. These are now new issues that the Board should not consider and regardless, the Region should be allowed to file a surreply.

It is not reasonable, let alone procedurally permissible, for Petitioners to raise the new issues of NEPA’s environmental assessment and categorical exclusion requirements in their Reply. Reply at 6. Nor should the Board permit Petitioners to abandon their SDWA argument that “there is no indication in the administrative record” that the analysis in 40 C.F.R. § 146.93(c) “were performed” to now engage for the first time with the Region’s extensive analysis that has been in the administrative record from the beginning. *Compare* Pet. at 16 to Reply at 13. Petitioners’ Reply argues for the first time that there is a specific, alleged

deficiency in the administrative record regarding the Region’s analysis under 40 C.F.R. § 146.93(c). Reply at 16-17. The Region should be afforded an opportunity to respond and correct Petitioners’ mischaracterization of the record. Part 124 governs permit appeals before the Board and establishes that “Petitioner[s] may not raise new issues or arguments in the reply.” 40 C.F.R. § 124.19(c)(2). Here Petitioners have violated that requirement and the Region respectfully asks the Board to disregard the new issues and new arguments raised within the Reply and allow the Region to file a surreply.

Consistent with 40 C.F.R. § 124.19(f)(2), the Region has consulted with counsel for Intervenor Permittee Wabash Carbon Services and it does not object to or oppose this motion. Petitioners oppose the motion.

Respectfully submitted,

DATE: June 11, 2024

Attachment: EPA REGION 5
SURREPLY TO PETITIONERS’ REPLY

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Motion to File Surreply Brief and Attachment EPA Region 5 Surreply to Petitioners' Reply in the matter of Wabash Carbon Services LLC were filed in the Environmental Appeal Board's electronic filing system and sent to the following persons in the manner indicated.

By email to:

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DATE: June 11, 2024

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