

BEFORE THE ENVIRONMENTAL APPEALS BOARD

United States Environmental Protection Agency

Washington, D.C

In the Matter of)
)
Smith Farm Enterprises, L.L.C.,) CWA Appeal No.: 08-02
Respondent.)
Docket No.: CWA-03-2001-0022)

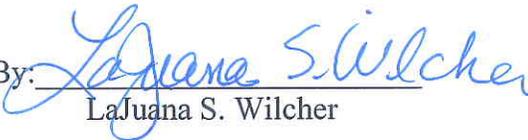
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Respondent Smith Farm Enterprises, L.L.C. hereby moves for leave to file a supplemental brief regarding the issue of fair notice. Respondent is aware that the October 6, 2006 Remand Order in this matter provided that “a new appeal [from the remand] may not raise any new issues except as they relate directly to the issue of jurisdiction.” Nonetheless, the Respondent seeks to submit this brief to address the issue of fair notice and to address this issue at oral argument. As described more fully in the attached Supplemental Brief, contrary to the assertions of the U.S. Environmental Protection Agency (“EPA”) these issues already have been raised during the course of the proceeding. Nonetheless, they have not been fully briefed.

The Respondent further states that on or about October 29, 2009, she contacted EPA counsel Stefania Shamet by phone to determine whether EPA objected to additional

briefing on this issue and on the impact of *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 129 S. Ct. 24J8(2009) on this case. The undersigned was told that EPA probably would not agree. The undersigned then requested that Counsel for EPA elevate the issue to her superiors. On or about May 14, 2010, the undersigned received a letter from EPA counsel stating that EPA would not agree to this motion, attached as Exhibit "A" to this motion. Fair notice is essential in any regulatory action, and as explained more fully in the attached Supplemental Brief, was not provided in this case. For these reasons described in the Supplemental Brief, the EAB should allow this information to be filed and discussed at oral argument on July 20, 2010.

Respectfully submitted,
SMITH FARM ENTERPRISES

By: 
LaJuana S. Wilcher

Date: July 12, 2010
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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2010, the **Motion for Leave to File Supplemental Brief** was filed electronically with the EPA Appeal Board.

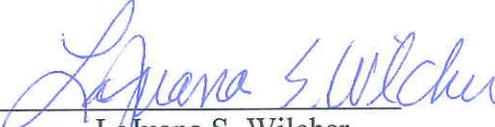
And one copy of the foregoing **Motion for Leave to File Supplemental Brief** was sent this day via email and Federal Express to the following:

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