

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

_____)	
In re:)	
)	
BP America Production Company,)	Appeal No. CAA 10-04
Florida River Compression Facility,)	
)	
Permit No. V-SU-0022-05.00)	
_____)	

PETITIONER’S MOTION FOR LEAVE TO FILE REPLY BRIEF

WildEarth Guardians (hereafter “Guardians”) hereby moves for leave to file a reply to the briefs submitted in the above-captioned matter. Petitioner filed its Notice of Appeal of the 40 C.F.R. Part 71 Title V Permit issued to BP America Production Company for the operation of the Florida River Compression Facility on November 17, 2010. Pursuant to the Environmental Appeals Board’s (“EAB’s”) Order of December 20, 2010, Respondents U.S. Environmental Protection Agency Region 8 (“EPA”) and BP America Production Company (hereafter “BP”) filed their response briefs on February 23 and 24, 2011, respectively (*see* Docs. 9 and 10).

Both BP and EPA’s response briefs raise new issues that Petitioner did not previously have the opportunity to address. Notably, both response briefs point to the February 3, 2011 Title V Petition response issued by the EPA Administrator (*see In the Matter of Anadarko Petroleum*, Order Denying Petition for Objection to Permit (Feb. 2, 2011)), in support of their arguments against Guardians’ Petition for Review. *See e.g.* EPA Response at 14-15, 31, and 36-37; BP Response at 2, 16, 24, 26, and 27.

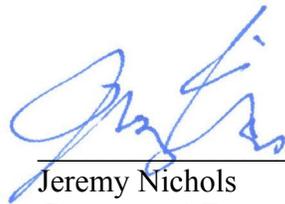
EPA’s response brief additionally argues that Guardians Petition for Review raises issues that were not preserved for review (*see* EPA Response at 37-39) and that its decision not to

reopen the public comment period was not an abuse of discretion for a number of reasons (*see* EPA Response at 39-51). BP's response brief raises similar arguments, and additionally argues that Guardians' did not challenge any "facts," and therefore its Petition for Review should therefore be denied. *See* BP Response at 23.

Guardians believes that the EAB would benefit from further briefing in this matter. In the alternative, if the EAB grants review and seeks further briefing, Guardians believes that process would also provide an opportunity to address the arguments raised in EPA's and BP's response briefs. *See* 40 C.F.R. § 124.19(c) (providing that the EAB may grant review and establish a briefing schedule.).¹ Furthermore, in the interest of timeliness, Guardians can provide a reply by March 9, 2011.

Guardians has conferred with counsel for EPA and BP regarding this motion. EPA takes no position, while BP opposes.

Respectfully submitted this 1st day of March 2011



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¹ Although regulations at 40 C.F.R. § 124 are not directly applicable to appeals of Title V Permits filed pursuant to 40 C.F.R. § 71.11(l), they are instructive in this matter. *See In re Peabody Western Coal Co.*, 12 E.A.D. 22, 33

CERTIFICATE OF SERVICE

I certify that on March 1, 2011, I served this Motion for Leave to File a Reply Brief by electronic mail upon the following parties:

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