

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

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In re: Energy Answers Arecibo, LLC)	
Arecibo Puerto Rico)	
Renewable Energy Project)	PSD Appeal No. 13-05
)	
)	

**MOTION FOR SUBMISSION OF A REPLY TO RESPONSES OF EPA REGION 2 AND
ENERGY ANSWERS ARECIBO, LLC**

Pursuant to 40 CFR § 124.19(c)(1), the Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineracion) (“the Coalition”) requests leave for the submission of a reply to the responses of EPA Region 2 and Energy Answers Arecibo, LLC. A copy of the proposed reply is being filed simultaneously with this motion.

The following are the reasons why the motion should be granted:

1. Preservation of Issues/Consideration of Evidence Not in the Record.

EPA and Energy Answers erroneously allege that issues in the Petition for Review were not raised during the public comment period. These issues relate to lead emissions, environmental justice issues, and material balance issues. They also erroneously argue that documents should not be considered by the Board, under the premise that they were not part of the administrative record. In the interest of fairness, the Coalition should be allowed to clarify that these issues were in fact raised below, and that all documents should be considered.

2. No Statutory Authority for EPA’s Regulation or Policy Interpretation.

EPA cites a final rule from 1980 which inaccurately asserts statutory authority for its interpretation that nonattainment new source review applies only if a facility is a major source

for a specific nonattainment pollutant. In the interest of fairness, the Coalition should be allowed the opportunity to clarify the actual language of the Clean Air Act Amendments of 1977, which does not support EPA's interpretation.

3. Challenges to Regulations May be Entertained.

In their responses, EPA and Energy Answers cite the decision of the Board in *In re: Sierra Pacific Industries*, PSD Appeal Nos. 13-01, 13-02, 13-03, 13-04 (EAB, July 18, 2013). This decision was rendered just two business days before the Coalition filed its Petition for Review. Respondents cite the decision to attempt to avoid a challenge to a regulation in a PSD permit appeal, and to attempt to exclude arguments asserted and evidence offered by the Coalition. They also cite this decision in support of their argument that the Board should decline to address biogenic CO₂, under the recent *Center for Biological Diversity* decision of the United States Court of Appeals for the District of Columbia Circuit. In the interest of fairness, the Coalition should be allowed the opportunity to respond to this decision, which actually recognizes that challenges to regulations may be heard and evidence outside the record may be considered.

For the reasons set forth above, the Coalition respectfully requests that this motion be granted.

Respectfully submitted,

The Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineracion)

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion for Submission of A Reply to Responses of EPA Region 2 and Energy Answers Arecibo, LLC, on this 26th day of August, 2013, via USPS First-class Mail to the following:

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Dated at South Royalton, Vermont on August 26, 2013.

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