

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL APPEALS BOARD

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In re:

Ocean Era, Inc. – Velella Epsilon Facility

NPDES Permit No. FL0A00001

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) NPDES Appeals No. 25-01 & No. 25-02  
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**EPA REGION 4’s MOTION FOR LEAVE TO FILE A SUR-REPLY**

On August 15, 2025, the Region filed its Consolidated Response to two separate petitions seeking review of the Region’s modified NPDES permit issued for an aquaculture facility in the Gulf of America, NPDES Appeals No. 25-01 & No. 25-02. On September 12, 2025, both Petitioners filed replies to the Region’s response. Both replies include arguments related to Administrative Record Document B.31 for the first time, described in the Administrative Record Index as “Memorandum re: removed permit conditions.” (hereinafter “Microplastics Memo”). *See* Friends of Animals (FOA) Reply Br. at pages 7-12 & Attachment 1; Center for Food Safety *et al* (CFS) Reply Br. & Attachment 1.

The Microplastics Memo constitutes deliberative material that should not be part of the administrative record as a matter of law. Accordingly, EPA has moved to correct the Administrative Record Index to remove the Microplastics Memo. Moreover, on the merits, the

substance of the Microplastics Memo and the arguments Petitioners have raised about the Memo are fully considered in the Region's record. While the Region previously addressed microplastics generally in its response brief, the Region did not have the opportunity to address arguments related to the Microplastics Memo specifically because they were not raised until the Petitioners' reply briefs. Therefore, the Region seeks leave to addresses these newly-raised microplastic-related arguments in this sur-reply.

EPA decision-makers were not made aware of the inadvertent inclusion until the document was raised by Petitioners in their reply briefs on September 12, 2025, which is why the Region is only moving now to address these issues. The Board's regulations do not prescribe specific timing for the filing of this motion. Regardless, EPA's motion is timely because it is being filed within 10 days of receipt of Petitioners' reply briefs that first raised this issue. In analogous circumstances, the Board requires petitioners in PSD and other new source permit appeals to file for leave to file a reply brief within 10 days of receipt of the response brief. 40 C.F.R. § 124.19(c)(1).

The CFS Petitioners do not oppose the Region's Motion for Leave to File a Sur-Reply. Friends of Animals' counsel indicated that they want to see a copy of the Motion for Leave to File a Sur-Reply before providing their position on this Motion. For the foregoing reasons, the Region requests leave to file a Sur-Reply addressing the Microplastics Memo and the Petitioners additional arguments relating to the Microplastics Memo. A proposed Sur-Reply is attached to this Motion.

Respectfully submitted.

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## CERTIFICATE OF SERVICE

I, Paul Schwartz, hereby certify that on September 22, 2025, I caused to be served a true and correct copy of the foregoing Motion for Leave to File Sur-Reply via the EAB's electronic filing system, and by sending a true and correct copy, via e-mail, to the following:

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