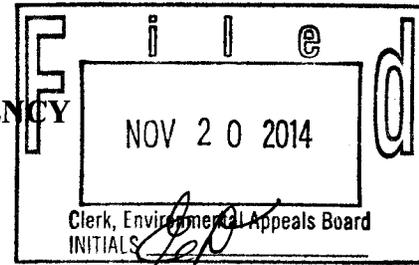


ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
)  
FutureGen Industrial Alliance, Inc. ) UIC Appeal No(s): 14-68, 14-69, 14-70 &  
) 14-71  
Permit Nos.: IL-137-6A-001 )  
) IL-137-6A-002 )  
) IL-137-6A-003 )  
) IL-137-6A-004 )

ORDER DENYING FUTUREGEN INDUSTRIAL ALLIANCE INC.'S  
MOTION FOR LEAVE TO FILE SURREPLY

This appeal involves four administratively consolidated petitions for review that the Leinberger Family (Andrew H. Leinberger Family Trust and DJL Farm LLC) and William and Sharon Critchelow (collectively Petitioners) filed on October 1, 2014. On November 12, 2014, the Environmental Appeals Board ("Board") granted, in part, Petitioners' motion for an extension of time file a reply brief in the above-captioned appeal. Petitioner's reply is now due December 5, 2014. In response to the Board's order, FutureGen Industrial Alliance ("FutureGen") now seeks leave to file a surreply on December 22, 2014.

The procedural rule governing permit appeals does not provide for surreplies to be filed as a matter of course. *See* 40 C.F.R. § 124.19. The Board may in its discretion, however, allow additional briefing when the Board determines that doing so will assist the Board in its deliberation of the appeal. 40 C.F.R. § 124.19(n). The rules require that motions state -- with particularity -- the grounds for the motion, as well as provide the necessary support. 40 C.F.R.

§124.19(f)(2). More specifically, a motion for surreply should specify those arguments to which it intends to respond and provide the reasons the movant believes a response is necessary.

FutureGen cannot specifically identify the arguments or issues to which it intends to respond, let alone justify a response to those arguments or issues, because Petitioners' have yet to filed their reply. In its motion, FutureGen *anticipates* that Petitioners may present new issues or arguments that were not previously raised, or may present other matters outside the record. FutureGen is preemptively seeking permission to respond, presumably to "complete all briefing in this matter as quickly as possible," and to "ensure that the necessary individuals" are available to assist in the reply. Motion at 3.

The procedural rules governing petitions for review, however, specifically provide that Petitioners "may not raise new issues or arguments in the reply." *See* 40 C.F.R. § 124.19(c)(2). Additionally, for every issue raised in a petition, Petitioners must provide "specific citation to the administrative record, including the document name and page number" to demonstrate that each issue was raised during the public comment period. *See* 40 C.F.R. § 124.19(a)(4)(ii). For any "issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period as provided in § 124.13." *Id.*

While we understand FutureGen's desire to proceed quickly, the Board will not presume that Petitioners will fail to adhere to the regulations governing appeals and the limitations placed on reply briefs, in particular. Accordingly, FutureGen's motion is **DENIED** as premature. If, after receiving Petitioners' reply brief, FutureGen determines that it has a basis for filing a surreply, FutureGen may, at that time, file a motion for leave to file a surreply that specifies the grounds for that request, as required by 40 C.F.R. § 124.19 (f)(2).

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: *November 20, 2014*

By: *Leslye M. Fraser*  
Leslye M. Fraser  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the forgoing Order Denying FutureGen Industrial Alliances, Inc.'s Motion for Leave to File Surreply in *In re FutureGen Industrial Alliance, Inc.*, UIC Appeal Nos. 14-68 through 14-71, were sent to the following persons in the manner indicated:

**By First Class Mail:**

Jennifer T. Nijman  
Nijman Franzetti, LLP  
10 S. LaSalle Street, Suite 3600  
Chicago, IL 60602

Karl Leinberger  
Markoff Leinberger LLC  
134 N. LaSalle Street, Suite 1050  
Chicago, IL 60602

John J. Buchovecky  
Marlys S. Palumbo  
Chris D. Zentz  
Van Ness Feldman, LLP  
1050 Thomas Jefferson St., NW, 7th Floor  
Washington, DC 20007

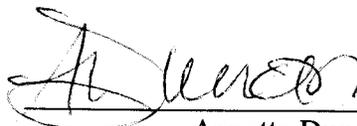
**By EPA Pouch Mail:**

Thomas J. Krueger  
Mary T. McAuliffe  
U.S. EPA Region 5  
Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**By Interoffice Mail:**

Aditi Prabhu  
Office of General Counsel  
U.S. EPA  
1200 Pennsylvania Ave., NW (Mailcode: 2355A)  
Washington, DC 20460

Dated: NOV 20 2014



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Annette Duncan  
Secretary