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

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ENVIR. APPEALS BOARD

In Re: : TSCA Appeal No. 06-01
:
Environmental Protection Services :
4 Industrial Park Drive :
Wheeling, WV 26003-0091, :
Appellant. :
:
:

Appellee EPA Region III's Response to Appellant EPS's Motion to Strike Portions of Attachment 2 of the Environmental Protection Agency's Response Brief

In Response to EPS's Motion to Strike Portions of Attachment 2 of the Environmental Protection Agency, Region III's Response to EPS's Appeal Brief, dated June 30, 2006, the Region states that EPS admitted their own errors in four of the six instances in the Motion.

In its Motion, Appellant states that: "EPS admits that this reference should have been made to CEX 2, as opposed to REX 2". Therefore by citing REX 2, EPS did cite to an exhibit number that was not admitted, as EPA correctly noted in Attachment 2.

In its Motion, Appellant states that admits that it "cited to REX 560", rather than REX 570. EPA correctly noted Appellant's inaccurate citing of REX 560 rather than REX 570 in Attachment 2.

In its Motion, Appellant states that it "intended to refer to REX 500, otherwise known as Exhibit 28". Unfortunately Appellant did not cite to Exhibit 28 in their appeal brief. The Region and the Environmental Appeals Board must rely on the record as stated by Appellant, not on their intentions.

In its Motion, Appellant states that: "The reference that EPS cites to in REX 479 pertains to the portion of the exhibit that was admitted.". However, Appellant cited "REX 479" without any specific "portion" identified. Therefore the Region's statement that Appellant cited to an exhibit in which some portion were not admitted is justifiable. Appellant has the burden to accurately maintain the accuracy of the record to support their case.

Although it is difficult to state for certain that all portions were admitted, it appears as if Appellant is correct in maintaining that REX 480 and REX 476 were admitted. During the four

weeks of hearings, exhibits were admitted by individual pages on different dates making the record of admitted exhibit difficult to discern. However, all other references in the Motion, Appellant admitted to inaccurately citing. (See above).

In Attachment 2 to the Appellee's Response Brief, the Region noted approximately fifty (50) instances where the Appellant failed to properly cite and/or reference exhibits in their Appeal. EPS's numerous misleading and/or inaccurate citations boldly undermine EPS's accurate portrayal of the Administrative hearing record. As stated in Appellee's Response, Attachment 2, these numerous instances underscore the need for scrutiny of EPS's Appeal Brief.

Respectfully submitted,

A handwritten signature in cursive script, reading "Cheryl L. Jamieson", is written over a horizontal line.

Cheryl L. Jamieson
Senior Assistant Regional Counsel
U.S. EPA - Region III
Counsel for Appellee

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, I caused the original and one true and correct copy of a letter regarding **Appellee EPA Region III's Response to Appellant EPS's Motion to Strike Portions of Attachment 2 of the Environmental Protection Agency's Response Brief** and a correct and true copy of such documents to be delivered to the following persons in the manner set forth below:

Via Fedex:

Original and Six Copies:

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Aug. 14-2006
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