

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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In re: ESSROC Cement Corporation)	
)	
RCRA Permit No. IND 005 081 542)	Appeal No. RCRA 13-03
)	

NOTICE OF APPEARANCE AND PRESENTION OF ORAL ARGUMENT

In accordance with the Order rescheduling oral argument in the above-captioned matter issued by the Environmental Appeal Board (“Board) dated February 10, 2014, U.S.

Environmental Protection Agency Region 5 (“Region 5” or the “Region”), by and through its attorneys, hereby notifies the Board of a change of representatives who will present oral argument on behalf of Region 5, and further notifies the Board of the planned order of presentation on behalf of the Region at the oral argument.

The Region previously notified the Board that Sabrina Argentieri, Esq, of Region 5’s Office of Regional Counsel, and Laurel Celeste, Esq., of the Office of General Counsel, would present oral argument in this matter on behalf of the Region. As was indicated during the Board’s status conference in this matter held on February 10, 2014, Ms. Celeste is unavailable to attend the rescheduled oral argument on March 11, 2014. In her stead, Robert Stachowiak, Esq. of the Office of General Counsel will present oral argument on behalf of the Region along with Ms. Argentieri. The Region hereby provides Mr. Stachowiak’s Notice of Appearance in this matter. Region 5 respectfully requests the Board to provide copies to Mr. Stachowiak of any of its filings, orders, or notices in this matter. Mr. Stachowiak’s contact information is as follows:

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Ms. Celeste remains of counsel in this matter and Region 5 respectfully requests the Board to continue to provide Ms. Celeste copies of any of its filings, orders, or notices in this matter.

Region 5 also notifies the Board that on behalf of Region 5, Mark J. Palermo, Esq. of Region 5's Office of Regional Counsel, and Christopher Lambesis and Todd Ramaly of Region 5's Land and Chemicals Division will be present at the oral argument to assist Ms. Argentieri and Mr. Stachowiak.

Region 5 notifies the Board of the division and order of presentation by Ms. Argentieri and Mr. Stachowiak as follows. In its Order Granting Petitioner's Request for Oral Argument dated September 25, 2013, the Board stated that oral argument participants should be prepared to present full arguments supporting their positions, with a particular focus on the following:

- (1) The scope of authority in 40 C.F.R. § 270.10(l)(1)(viii) for the 2012 site specific risk assessment in light of (as applicable) previous positions taken by the Agency and CKRC [Cement Kiln Recycling Coalition] in previous litigation related to this final rule (e.g., as applicable, the preamble to the final rule, comments on the proposed rule, response to those comments, and briefing and oral argument on April 16, 2007 in *Cement Kiln Recycling Coalition v. EPA*, 493 F.3d 207 (D.C. Cir. 2007);
- (2) The interpretation that should be given to 40 C.F.R. § 270.10(l)(1)(ix) in light of the D.C. Circuit's decision in *Cement Kiln Recycling Coalition v. EPA* that "any

information under [this factor] must be ‘similar in nature’ to that identified in the first eight,” 493 F.3d at 221, and “the ‘catchall has to be understood within the context of the limitations’ enumerated in the first eight factors,” *id.* at 221 n.8 (citing Oral Arg. Recording at 1:02:53); and

- (3) Region 5’s reliance on the 1997 Mercury Study Report to Congress and/or the 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities to establish the annual mercury feed rate limit.

In the Region’s allotted time for oral argument Mr. Stachowiak will address Issues 1 and 2 identified in the Board’s September 25, 2013 Order, address the Petitioner’s issue for appeal and respond to questions concerning the legal authority for EPA to conduct the 2012 site-specific risk assessment. Ms. Argentieri will address Issue 3 identified in the September 25, 2013 Order and will address the Petitioner’s issues for appeal and respond to questions concerning Region 5’s 2012 site-specific risk assessment and decision to establish the annual mercury feed rate limit in the Resource Conservation and Recovery Act (RCRA) permit issued to Petitioner.

Under the Order Rescheduling Oral Argument, dated October 23, 2013, the Board has allocated ninety (90) minutes total for this oral argument, divided as follows: thirty-five (35) minutes for the Petitioner ESSROC Cement Corporation (ESSROC), thirty-five (35) minutes for Region 5, ten (10) minutes for *amicus curiae* CKRC, and ten (10) minutes for Region to respond to CKRC’s argument. The Order further provides that at the outset of proceedings, ESSROC may reserve up to ten (10) minutes of its allocated time for rebuttal.

With respect to the 35 minutes allocated to Region 5, Mr. Stachowiak plans to present argument first for 20 minutes followed by Ms. Argentieri for 15 minutes, but they may notify the Board during the presentation that they are adjusting this time-sharing depending upon the

argument presented by Petitioner or questions raised by the Board. With respect to the 10 minutes to respond to CKRC's argument, Mr. Stachowiak plans to present argument for the first 5 minutes followed by Ms. Argentieri for the remaining 5 minutes as necessary to address CKRC's argument, but again they may notify the Board during the presentation of any changes to the time-sharing depending upon the argument presented by CKRC or questions raised by the Board.

Respectfully submitted this 4th day of March, 2014

/s/ Mark J. Palermo

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CERTIFICATE OF SERVICE

Appeal No. RCRA 13-03

**ESSROC Cement Corporation
RCRA Permit IND 005 081 542**

I hereby certify that on this 4th day of March, 2014, I caused to be electronically filed the foregoing “Unopposed Motion for Extension of Date for Oral Argument”, and caused to be mailed a true and correct copy of these documents to the Petitioner and *Amicus Curiae* by electronic mail (under agreement of the parties established March 4, 2014 to accept electronic mail service for this matter) as follows:

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Dated: March 4, 2014

/s/ Mark J. Palermo

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