

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

)	
In re:)	
Springfield Water & Sewer Commission)	NPDES Appeal No. 20-07
NPDES Permit No. MA0101613)	
)	

**ORDER GRANTING MOTION
TO FILE SURREPLY**

By motion filed February 5, 2021, U.S. Environmental Protection Agency, Region 1 (“Region”), seeks leave to file a surreply brief responding to two arguments that the Region alleges the petitioner in this proceeding, the Springfield Water and Sewer Commission (“Commision”), raised for the first time in its reply brief in contravention of 40 C.F.R. § 124.19(c)(2). The Region requests that it be given the opportunity in a surreply brief “to identify these arguments and to concisely respond to them.” EPA Motion for Leave to File Surreply 3 (Feb. 5, 2021) (“Motion”). According to the Region, it contacted the Commission prior to filing this motion and the Commission indicated it objects to the Region filing a surreply brief. *Id.*

The Environmental Appeal Board has discretion to grant requests for surreply briefs and has typically exercised that discretion where it is alleged that new arguments are raised in reply briefs or where further briefing would assist the Board in resolving disputed claims. *See In re ArcelorMittal Cleveland, Inc.*, NPDES Appeal No. 11-01 at 1 (EAB Dec. 9, 2011) (Order Granting in Part EPA’s Motion to File Surreply) (citing cases); *see also* 40 C.F.R. § 124.19(o).

As noted, the Region alleges in its motion that the Commission has raised new arguments in its reply brief. Further, the Region argues that allowing the Region to file a surreply brief would be equitable and would “promote efficiency and assist the Board in its decision making.” Motion at 3. Finally, the Region states that EPA has “endeavored to analyze the Reply and to finalize a response as quickly as possible,” and that EPA is prepared to file its surreply immediately upon the Board’s ruling on this motion.

Upon examination of the filings in this case, the Board concludes that a surreply brief would be helpful in its decisionmaking process and, accordingly, the Board hereby **GRANTS** the Region’s request to file a surreply brief identifying the new issues raised in the Commission’s reply brief and concisely responding to those issues. The Board further **ORDERS** that the Region’s surreply brief be filed on or before **Friday, February 12, 2021**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: Feb 09, 2021

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Granting Motion to File Surreply** in the matter of *Springfield Water & Sewer Commission*, NPDES Appeal No. 20-07, were sent to the following persons in the manner indicated:

By Electronic Mail:

Attorneys for Springfield Water and Sewer Commission

Fredric P. Andes
Erika K. Powers
Ashley E. Parr
Barnes & Thornburg L.L.P.
One North Wacker Drive, Suite 4400
Chicago, IL 60647
(312) 357-1313
Fredric.Andes@btlaw.com
Erika.Powers@btlaw.com
Ashley.Parr@btlaw.com

Attorneys for EPA Region 1

Samir Bukhari
Michael Knapp
Kristen Scherb
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 1
5 Post Office Square
Boston, MA 02109
(617) 918-1095
(617) 918-1053
(617) 918-1767
bukhari.samir@epa.gov
knapp.michael@epa.gov
scherb.kristen@epa.gov

Attorney for Save the Sound, Inc.

Roger Reynolds
Senior Legal Counsel
Save the Sound, Inc.
900 Chapel Street, Suite 2202
New Haven, CT 06510
(203) 787-0646 Ext. 105
rreynolds@savethesound.org

Pooja Parikh
Peter Ford
U.S. Environmental Protection Agency
Office of General Counsel, Water Law Office
1200 Pennsylvania Avenue, N.W.
Mail Code 2355A
Washington, DC 20460
(202) 564-0839
(202) 564-5593
parikh.pooja@epa.gov
ford.peter@epa.gov

Connecticut River Conservancy Representative

Andrea Donlon, River Steward
Connecticut River Conservancy
15 Bank Row
Greenfield, MA 01301
(413) 772-2020 Ext. 205
adonlon@ctriver.org

*Attorney for Connecticut Department of
Energy and Environmental Protection*

Scott N. Koschwitz
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
scott.koschwitz@ct.gov

Dated: Feb 09, 2021



Eurika Durr
Clerk of the Board