

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

In the Matter of:

City of Manchester

NPDES Permit No. NH0100447

NPDES Appeal No. 25-05

**CONSERVATION LAW FOUNDATION’S REPLY TO
EPA REGION 1’S AND THE CITY OF MANCHESTER’S RESPONSES TO
CLF’S MOTION FOR LEAVE TO INTERVENE
OR, IN THE ALTERNATIVE, TO CONSOLIDATE DOCKETS**

Conservation Law Foundation (“CLF”), petitioner in NPDES Appeal No. 25-04 and movant to intervene in this docket (NPDES No. 25-05), respectfully provides the following limited reply to the Environmental Protection Agency, Region 1’s (“the Region”) and the City of Manchester, New Hampshire’s (“the City”) responses to CLF’s Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (“Motion”):

Brief Procedural Background

1. This docket and NPDES Appeal No. 25-04 are both appeals of an NPDES permit issued by the Region for discharges from the City’s wastewater treatment facility (“WWTF”).
2. On January 7, 2026, CLF filed the above-referenced Motion seeking to intervene in this docket on the grounds that (1) it has a direct interest in issues raised in this docket, the outcome of which could severely impair its interests, which will not be represented by another

party to this docket, and (2) intervention would advance the interests of judicial economy.

Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (Jan. 7, 2026).

3. On January 20, 2026, the City filed a motion seeking, *inter alia*, a February 20, 2026 deadline to respond to CLF’s Motion. Motion of the City of Manchester for an Order Confirming Stay of Appeal Deadlines and to Defer Ruling Upon CLF’s Intervention Motion Due to Stay of Appeal Deadlines (Jan. 20, 2026).

4. On January 21, 2026, the Region filed a response opposing CLF’s Motion. EPA Region 1’s Opposition to the Motion for Leave to Intervene, Or in the Alternative to Consolidate Dockets (Jan. 21, 2026) (“the Region’s Response”).

5. On January 22, 2026, the Board issued a scheduling order stating, *inter alia*, that “[t]he City shall file any response to the Motion on or before **Thursday, January 29, 2026,**” and “CLF shall file any reply to the responses no later than **Monday, February 9, 2026.**” Scheduling Order (Jan. 22, 2026) at 2 (bold typeface in original).

6. On January 29, 2026, the City filed a response objecting to CLF’s Motion. Objection by the City of Manchester, New Hampshire to Conservation Law Foundation’s Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (Jan. 29, 2026) (“the City’s Response”).

7. Pursuant to the Board’s scheduling order, CLF hereby timely files the instant reply to the Region’s and City’s Responses.

Argument

8. The Region and the City argue that CLF has no direct interest in this appeal. *See* EPA’s Response at 3-4; City’s Response at 3-4. The Region further contends that CLF’s interest in the issue of PFAS monitoring requirements is no greater than “any other member of the public

concerned about PFAS.” Region’s Response at 4. The City argues more broadly that CLF “merely stat[ed] that [it] has a general interest in [the] appeal” and has an interest no greater than that of the general public. City’s Response at 3-4. Contrary to these arguments, CLF has a direct and specific interest in this appeal, and interests greater than the general public, as it has an appeal pending before the Board that relates specifically to PFAS, including the lack of effluent limitations regulating PFAS. *See* Petition for Review, NPDES Appeal No. 25-04. The City’s contention in this appeal – that a 2020 Consent Decree precludes the Region from imposing new or more stringent conditions in the permit – relates directly to CLF’s direct and specific interest in its appeal to regulate PFAS, as does the City’s argument challenging the permit’s PFAS monitoring requirements.¹ If the City were to prevail on either of these arguments – whether in a settlement agreement, or in a Board decision – CLF’s ability to secure the relief sought in its appeal would be greatly undermined.

9. The Region also suggests that CLF’s interests will be protected by the Region and that CLF has not demonstrated a lack of alignment between its interests and the interests of the Region. *See* EPA Response at 3, 5, 6. While CLF appreciates the Region’s characterization of the City’s Consent Decree argument as “dubious,” and its statement that “EPA too has an interest in the regulation of PFAS,” it is impossible to know or predict whether or how these issues might be addressed in the back-and-forth of bilateral negotiations. Moreover, as demonstrated in CLF’s pending appeal, CLF’s and EPA’s positions related to the regulation of PFAS are *not* aligned. *See* Petition for Review, NPDES Appeal No. 25-04.

¹ While CLF does not consider the permit’s PFAS monitoring requirements sufficient to address PFAS pollution from the City’s wastewater treatment facility (i.e., as CLF argues in its Petition for Review, the permit should include measures that control and reduce PFAS), the Region relies on the permit’s PFAS monitoring requirements, challenged by the City in this appeal, as part of its response to the PFAS issues raised in CLF’s appeal. *See* EPA Region 1’s Response to Petition for Review, NPDES Appeal No. 25-04, at 18-19 (Jan. 30, 2026).

10. The City argues that granting CLF's Motion would allow CLF to assert arguments on issues it did not comment on or preserve in its appeal. *See* City's Response at 6. CLF's intent in intervening in this matter is to engage in issues directly related to or affecting the issues it has raised in its appeal (all of which have been preserved), such as the legal effect of the 2020 Consent Decree on EPA's regulatory authority and the validity of the permit conditions requiring PFAS monitoring.² It does not seek to engage in advocacy related to other issues, such as ammonia limits.

11. In response to the Region's concern about CLF potentially insisting that settlement negotiations "involve resolution of *all* issues, including those from its own appeal docket," it is not CLF's intent to do so. Rather, CLF understands and acknowledges the value of resolving some, as opposed to all, issues for purposes of simplifying matters before the Board and would not serve as an impediment to doing so.

12. Finally, CLF is aware of its rights to participate as an amicus and, as acknowledged in its Motion, to comment on – and appeal if necessary – any amendments to the NPDES permit resulting from this docket. *See* Motion at 5, ¶ 14. CLF nonetheless maintains that the interests of judicial economy would be served by granting it intervener status to avoid, or decrease the likelihood of, the resolution of issues in ways that directly affect CLF's interests and result in an amended permit that yields yet further litigation.

² It is worth noting that CLF *did* specifically comment on the Region's PFAS monitoring requirements, supporting the Region's monitoring requirements that the City now challenges, but urging an increased frequency of PFAS monitoring. NPDES Appeal No. 25-04, Petition for Review, Att. 2 (Region's Response to Comments) at 72-73. CLF did not specifically comment on the legal effect of the Consent Decree, as that discrete issue was not evident in the draft NPDES permit nor is it one CLF reasonably could or should have anticipated. Nonetheless, the issue has direct implications on issues that are at the heart of CLF's appeal in NPDES Appeal No. 25-04.

Conclusion

For the foregoing reasons, and the reasons set forth in CLF’s Motion, the Board should grant CLF’s request for intervener status or, in the alternative, consolidate this docket and NPDES Appeal No. 25-04.

Dated: February 9, 2026

/s/ Thomas F. Irwin
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STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I, Thomas F. Irwin, hereby certify that the foregoing Reply contains fewer than 7,000 words in accordance with 40 C.F.R. § 124.19(f)(5).

Dated: February 9, 2026

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CERTIFICATE OF SERVICE

I, Thomas F. Irwin, hereby certify that on February 9, 2026, a copy of this Reply has been electronically sent to the following persons, in the manner specified below:

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