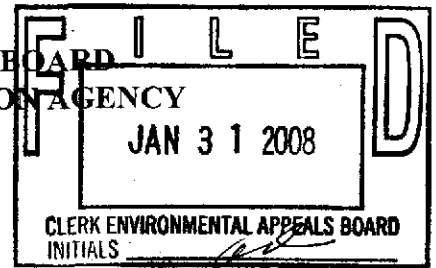


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )

City of Keene Wastewater Treatment Facility )

NPDES Permit No. NH0100790 )

NPDES Appeal No. 07-18

**ORDER GRANTING MOTION  
FOR LEAVE TO FILE A REPLY**

By motion filed January 11, 2008, the City of Keene, New Hampshire, seeks leave to file a reply to EPA Region 1's response to the City's petition for review in the above-captioned matter. Among other things, the City requests an opportunity to file a reply memorandum because the Region, the City asserts, raised new arguments in its response brief for the first time in these permitting proceedings. *See* City's Motion for Leave to File Reply Memorandum ¶ 5, at 2 (arguing that City's proffered reply brief "does not rehash the arguments previously raised by the City [in its petition for review], but rather responds directly to arguments raised for the first time by [the Region] in its [response brief]"). The Region opposes the City's motion, claiming that none of the reasons advanced by the City for allowing the filing of a reply are legitimate ones. In so claiming, the Region notes the following:

In defending the [NPDES] permit, the Region in its [response brief] relies on existing rationales pertaining to the phosphorus limit already set forth in the fact sheet and the response to comments. *Whereas new arguments appearing for the first time in a response to petition might well counsel in favor of a reply brief, that is clearly not the case here.*

Region 1's Opposition to Motion for Leave to File Reply Memorandum at 2 n.1 (emphasis added).

We make no determination at this juncture whether the City or the Region is correct with respect to the question whether new arguments are raised by the Region in its response brief. Instead, at this point, we hereby **GRANT** the City's motion for leave to file a reply brief and accept the brief for filing. However, we put the City on notice that we will entertain the substance of that brief only to the extent that it indeed addresses arguments newly raised by the Region. We similarly **GRANT** the Region's request to file a surreply to the City's reply, but, again, with the caveat that we will only entertain the substance of any such surreply to the extent that it responds to new arguments identified by the City in its reply brief. If the Region chooses to file a surreply, it must do so on or before Friday, February 15, 2008.


So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: \_\_\_\_\_

1/31/08

By: \_\_\_\_\_

  
Edward E. Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing **Order Granting Motion for Leave to File a Reply** in the matter of *City of Keene Wastewater Treatment Plant*, NPDES Appeal No. 07-18, were sent to the following persons in the manner indicated:

**By Facsimile and First Class Mail:**

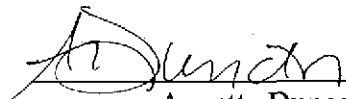
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Date: JAN 31 2008

  
Annette Duncan  
Secretary