



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

\_\_\_\_\_)  
In re: )  
City of Keene ) NPDES Appeal No. 21-03  
NPDES Permit No. NH-0100790 )  
\_\_\_\_\_)

**ORDER SETTING DEADLINE FOR ANY RESPONSE TO EPA REGION 1’S MOTION  
FOR LEAVE TO FILE SURREPLY AND ANY REPLY TO RESPONSE**

On January 21, 2022, EPA Region 1 (“Region”) filed a motion seeking leave to file a surreply in response to the reply brief filed by Petitioner City of Keene (“Petitioner”). EPA Region 1’s Motion for Leave to File Surreply (Jan. 21, 2022) (“Motion”). In support, the Region contends that Petitioner raises three new arguments in its reply, contrary to the regulations governing this appeal. Motion at 2 (citing 40 C.F.R. § 124.19(c) (“Petitioner may not raise new issues or arguments in the reply.”)). Additionally, the Region asserts that the Petitioner’s reply “improperly attempts to wholly recharacterize Petitioner’s original request for a copper special condition” and that granting the request to file a surreply would “promote equity and efficiency” and assist the Environmental Appeals Board (“Board”) in its decision-making. *Id.* The Region states that it contacted counsel for the Petitioner who indicated Petitioner objects to the Motion. *Id.* at 3.

Regulations governing this appeal provide that “[a]ny party may file a response to a motion \* \* \* within 15 days after service of the motion unless the Environmental Appeals Board

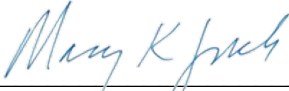
shortens or extends the time for response.” 40 C.F.R. § 124.19(f)(3). Although the regulations allow a response to a motion, the Board may act on a motion for a procedural order without awaiting a response. *Id.* § 124.19(f)(6). Furthermore, the Board may exercise its discretion to shorten the time for a response to promote administrative efficiency. *See id.* § 124.19(n) (“[T]he Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part.”); *In re Gasco Energy, Inc.*, UIC Appeal No. 14-191, at 2 (EAB Jan. 14, 2015) (Order Shortening Deadline for Filing Opposition Briefs and Holding in Abeyance Deadline for Filing Response Briefs).

At this juncture in the case, the Board makes no determination as to whether the Region is correct that Petitioner’s reply raises new arguments or improperly recharacterizes Petitioner’s original request, but we find that shortening the time for any response, and any reply to a response, will promote administrative efficiency. Accordingly, the Board **ORDERS** Petitioner to file a response to the pending motion, if it so chooses, as soon as possible but no later than **Monday, January 31, 2022**. The Region may file a reply to the response, if it so chooses, as soon as possible after the response but no later than **Monday, February 7, 2022**.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: January 25, 2022

By:   
\_\_\_\_\_  
Mary Kay Lynch  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing **ORDER SETTING DEADLINE FOR ANY RESPONSE TO EPA REGION 1'S MOTION FOR LEAVE TO FILE SURREPLY AND ANY REPLY TO RESPONSE** in the matter of *City of Keene*, NPDES Appeal No. 21-03, were sent to the following persons by electronic mail:

*For Petitioner*

Joanna Tourangeau  
Drummond Woodsum & MacMahon  
670 N. Commercial Street, Suite 207  
Manchester, NH 03101  
(603) 716-2895  
(603) 716-2899 (fax)  
jtourangeau@dwmlaw.com

Stacey Caulk  
Drummond Woodsum & MacMahon  
84 Marginal Way, Suite 600  
Portland, ME 04101  
(207) 772-1941  
(207) 772-3627 (fax)  
scaulk@dwmlaw.com

*For Region 1*

Deborah Szaro  
Acting Regional Administrator  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Szaro.Deb@epa.gov

Carl Dierker  
Regional Counsel  
U.S. EPA Region 1  
5 Post Office Square  
Boston, MA 02109-3912  
Dierker.Carl@epa.gov

Kristen Scherb  
Samir Bukhari  
U.S. EPA Region 1  
Office of Regional Counsel  
5 Post Office Square  
Boston, MA 02109-3912  
Scherb.Kristen@epa.gov  
Bukhari.Samir@epa.gov

Dated: January 25, 2022



---

Emilio Cortes  
Clerk of the Board