



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

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

ORDER GRANTING EXTENSION OF TIME FOR
FILING BRIEF IN SUPPORT OF PETITION FOR REVIEW

On September 24, 2021, City of Keene filed a "Notice of Appeal" of a National Pollution Discharge Elimination System ("NPDES") permit issued by Region 1 of the U.S. Environmental Protection Agency to the City of Keene. Appeals of permit decisions under 40 C.F.R. § 124.15 are commenced by the filing of a petition for review. 40 C.F.R. § 124.19(a)(1). Such petitions "must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner's contentions for why the permit decision should be reviewed." Id. § 124.19(a)(4)(i). Rather than including the required contents of a petition for review in its Notice of Appeal, the City of Keene attached to the Notice of Appeal a motion requesting an additional thirty days, from October 14, 2021 to November 15, 2021, to submit a brief setting forth the factual and legal grounds for their appeal.

The City of Keene requests this thirty-day extension in order "to obtain technical and legal assessment of the changes to the Permit from the draft and to assess the viability of options presented in the Response to Comments prepared by EPA Region 1." City of Keene Unopposed Motion for Extension of Time to File Appeal Brief 1 (Sept. 24, 2021). The City of Keene

asserts, among other things, that the “comprehensiveness and complexity of EPA’s responses warrant sufficient time for review and consideration.” *Id.* at 1. The City of Keene represents that Region 1 does not oppose its request for an extension. *Id.* at 2.

Accordingly, based on the representations in the City of Keene’s motion, the Board **GRANTS** this motion. The City of Keene’s brief in support of its Petition for Review must be filed with the Board on or before **November 15, 2021**.

In conjunction with this new date for submission of the brief in support of the Petition for Review, we are also revising several other due dates for submissions in this proceeding. First, Region 1 must file a response to the Petition for Review, a certified index of the administrative record, and the relevant portions of the administrative record with the Board on or before **December 15, 2021**. *See* 40 C.F.R. § 124.19(b)(2) (requiring these submissions from the Regional Administrator within twenty-one days after the service of the petition for a PSD or other new source permit and within thirty days for all other permit appeals under section 124.19). Additionally, if they choose to participate, States or Tribal authorities where the permitted facility or site is or is proposed to be located must file a notice of appearance and a response to the Petition for Review with the Board on or before **December 15, 2021**. *See id.* § 124.19(b)(4) (requiring States and Tribal authorities, if they choose to participate, to file a notice of appearance and a response to the petition for review within the time frame established for the Regional Administrator’s response filings). Finally, if any interested person chooses to file an amicus brief, that brief must be filed with the Board on or before **December 30, 2021**. *See id.* § 124.19(e) (requiring amicus briefs be filed within fifteen days after the filing of the response brief, except for an amicus briefs in a PSD and new source permits, which should be filed twenty-one days after filing of the petition for review). All of these adjustments to filing dates

are made pursuant to 40 C.F.R. § 124.19(n), which authorizes the Board to “take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part including \* \* \* relax[ing] or suspend[ing] the filing requirements prescribed by these rules or Board order.”

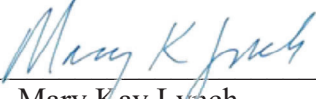
Pursuant to 40 C.F.R. section 124.19(i)(3)(iii), the Board is serving this Order by e-mail (Clerk\_EAB@epa.gov) at the addresses listed on the attached Certificate of Service.

Additionally, the Board has authorized all parties in permit appeals to use e-mail to fulfill their service obligations under 40 C.F.R. § 124.19(i)(3)(ii). *See Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals (EAB Sept. 21, 2020).* Parties shall promptly notify the Board and the other parties of any changes to their e-mail addresses and shall provide an email address if they have not already done so.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: **Sept. 27, 2021**

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

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Granting Extension of Time For Filing Brief in Support of Petition for Review** in the matter of *City of Keene*, NPDES Appeal No. 21-03, were sent to the following persons by electronic mail:

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Dated: Sep 27, 2021

*Emilio Cortes*

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Emilio Cortes  
Clerk of the Board