

**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

**EPA REGION 1’S OPPOSITION TO THE MOTION FOR LEAVE TO INTERVENE, OR IN
THE ALTERNATIVE TO CONSOLIDATE DOCKETS**

Pursuant to 40 C.F.R. § 124.19(f), Region 1 of the United States Environmental Protection Agency (“the Region”) hereby submits to the Environmental Appeals Board (“Board”) its Opposition to the Conservation Law Foundation’s (“CLF’s”) Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets, in the above-captioned matter.

I. Background

On November 3, 2025, EPA issued a National Pollutant Discharge Elimination System (“NPDES”) Permit (“the Permit”), authorizing discharges from the City of Manchester’s (“the City’s”) wastewater treatment facility to the Merrimack River and other receiving waters.

On December 3, 2025, the City timely filed its Petition for Review (“City Petition”) with the Board in this docket (NPDES Appeal No. 25-05). The Petitioner requests review of several aspects of the permit decision: certain Permit conditions alleged to be in conflict with a 2020 Consent Decree among EPA, the State of New Hampshire and the City; the ammonia limit and associated compliance schedule; the PFAS monitoring requirements; WET testing frequency; the monthly DMR submission requirement; and the pollutant scan requirement.

On that same day, CLF also timely filed its Petition for Review (“CLF Petition”) with the Board (NPDES Appeal No. 25-04). In its appeal, CLF requests review of three issues related to the Permit decision, which it characterizes as: the Region’s decision to not evaluate whether the PFAS discharges have a “reasonable potential” to cause or contribute to a violation of New Hampshire’s narrative water quality standards; the Region’s change to the benthic survey requirement from the draft to final permit with no additional notice and opportunity for public comment; and the Region’s decision to not perform an environmental justice analysis pursuant to agency guidance.

In CLF’s appeal, the Region filed an unopposed Motion for a twenty-eight (28) day extension of time to file its Response to the CLF Petition, which was granted by the Board on December 16, 2025, establishing the Region’s new filing deadline as Friday, January 30, 2026. Additionally, on December 26, 2025, the City filed its Notice of Appearance in the CLF Appeal and its unopposed Motion for an Extension of Time to File a Response. The Board granted the City’s Motion for an Extension of Time on December 30, 2025, setting its new filing deadline as Friday, January 30, 2026.

In the City’s appeal, the Region filed an assented-to Motion requesting a stay of the proceedings on December 19, 2025, in order to facilitate settlement discussions between the Region and the City. On December 22, 2025, the Board issued an Order Granting Stay of Proceedings and Directing Status Report in the City’s appeal. More specifically, the Board stayed the case until Friday, February 20, 2026, and directed the parties to submit a status report on or before Tuesday, February 10, 2026.

Finally, on January 7, 2026, CLF filed in the docket for the City’s appeal the instant Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (“CLF Motion to Intervene”) “to protect its interests and to advance the interests of judicial economy.” CLF Motion to Intervene at 1. This Motion to Intervene is opposed by both the Region and City. EPA Region 1 opposes CLF’s motion for the reasons set forth in detail below.

II. Argument

As CLF correctly explains in its Motion to Intervene, “neither the EAB Practice Manual nor 40 C.F.R. part 124 specifically addresses the question of intervention, and the EAB Practice Manual addresses the filing of responses by nonparties only when that party is a permittee. Accordingly, the Board exercises its discretion when deciding whether to grant intervention and non-party briefing.” *In re District of Columbia Water and Sewer Authority*, NPDES App. Nos. 05-02, 07-10, 07-11, 07-12, at 3 (internal citations and footnote omitted). The Board has further articulated that it is “less inclined . . . to grant intervention to parties that are neither permittees nor permitting authorities.” *Id.* at 4.

Though it is neither a permittee nor a permitting authority, CLF argues that its intervention is warranted to protect its interests and the interests of judicial economy including, for example, that intervention could facilitate an agreement resulting in complete relief as to both pending appeals. CLF Motion to Intervene at 1, 3. As described in greater detail below, the Board should deny CLF’s requested relief because the movant’s interests are fully protected, and judicial economy and efficiency support maintaining the existing party configuration.

a. The City’s Interests Are Protected and Unimpaired

CLF claims that it has a “direct interest in the issues raised in this docket,” Motion to Intervene at 3, and further that its interest will be “severely impair[ed]” and will not be represented by another party. These assertions are without merit and fail to account for the legal processes established under the Clean Water Act, the Administrative Procedure Act, and relevant federal regulations that CLF can utilize to protect its interests.

As a threshold matter, CLF does not establish any “direct interest” in the City’s Petition, and this alone is sufficient basis to deny intervention.¹ While it is true that both appeals include claims

¹ Moreover, CLF fails to define “direct interest” or articulate the relevance of this term to the Part 124 procedures.

falling under the general subject matter of per- and polyfluoroalkyl substances (PFAS), the specific claims at issue in the City's Petition are wholly distinct from those raised in CLF's Petition. The PFAS monitoring requirements at issue in the City's appeal are based on a different Clean Water Act (CWA) authority (*i.e.*, section 308, 33 U.S.C. § 1318) and are unrelated to the argument in CLF's appeal that EPA must conduct a reasonable potential analysis for PFAS compounds pursuant to CWA 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C). Despite its attempts at issue conflation, in reality, CLF has no greater interest, to say nothing of a direct one, than any other member of the public concerned about PFAS. That exceedingly low bar cannot serve for purposes of evaluating the merits of an intervention motion, especially where the movant is neither permittee nor permitting agency.

CLF provides two hypothetical scenarios in which its interest(s) might be impaired if not granted party status in the City's appeal. Both examples advanced by CLF to support its argument are purely speculative, and upon examination, only serve to illustrate the avenues through which CLF could challenge the results of any changes to the permit stemming from the City's appeal with which it might disagree.

In the first example, CLF conjures a scenario where the Board reaches a decision, or EPA and the City enter into a settlement agreement, that endorses the dubious notion that the 2020 Consent Decree precludes new or more stringent conditions in the City's NPDES permit. But CLF neglects to describe how its interests would be impaired more than any another member of the public who might happen to disagree with that result. Obviously, if the Board were to make any such determination and, as a result, remand the proceedings to the Region on one or more permit conditions (or if EPA were to withdraw and re-notice certain portions of the permit), CLF and other members of the public would have the opportunity to comment on the newly proposed conditions/modifications, to appeal any final permit conditions to the Board, and to further appeal final agency action in federal court. *See* 40 C.F.R. § 124.19(j); 33 U.S.C. § 1369(b)(1)(F); *see also*

Rhode Island v. United States EPA, 378 F.3d 19, 26 (1st Cir. 2004) (describing that the CWA allows any interested person, regardless of whether a party to the EAB appeal, to seek judicial review of a final permit decision). Thus, CLF has clear avenues through which it may protect its interests and challenge any unfavorable resolution or order that could arise in this docket.

In the second example, CLF conjectures that negotiations between the City and EPA might lead to a modification of the Permit related to PFAS monitoring. Were that to occur, CLF would likewise have the opportunity to comment on such proposed modification, appeal any final permit modification to the EAB, and further appeal any subsequent final permit decision in federal court. In fact, CLF expressly acknowledges this public process and the opportunity it provides to protect its interests. *See* CLF Motion to Intervene, at 5, ¶ 14.

Underlying both examples is another fundamental failing: while CLF makes the blanket assertion that their interests would not be adequately protected by the existing parties to the appeal, it does not even attempt to establish how its interests depart or diverge from the Region's. Though CLF is concerned that "its interest in the regulation of PFAS would be undermined," Motion to Intervene at 4, should certain scenarios materialize, a fact left unaddressed is that EPA too has an interest in the regulation of PFAS, as it has expressly stated on the record and elsewhere. Simply presuming the worst, from movant's standpoint, is plainly not sufficient justification for granting party status.

Finally, if settlement discussions are unsuccessful and the matter proceeds to active litigation, Part 124 procedures already grant CLF the right to advocate in support of its interests in the City's appeal: CLF may participate as an *amicus curiae*. *See* 40 C.F.R. § 124.19(e) ("***Participation by amicus curiae***. Any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 15 days after the filing of the response brief . . ."). Should the Region file a response brief and CLF determine that briefing certain issues will be helpful to the Board's disposition of claims in the City's appeal or

would support its own interests, it need not be conferred party status and may instead do so by filing an amicus brief. This is yet another instance where EAB regulations afford CLF an opportunity to ensure its interests are understood and unimpaired.

b. Judicial Economy and Efficiency Demand that CLF Remain a Non-Party in the City's Appeal

CLF claims that if granted intervenor status, there is a greater likelihood of the parties resolving both dockets through settlement discussions. This assertion is at odds with a few critical facts. Importantly, the City and EPA intend to have focused discussions on issues likely unrelated to any of CLF's interests (*e.g.*, ammonia conditions or pollutant scan requirements). CLF's participation in any such discussions will not facilitate resolution but will instead complicate achieving speedy resolution of the City's Petition, necessitating agreement of three parties rather than two. Under this scenario, *i.e.*, where discussions focus solely on issues that CLF does not have any interest in, CLF has indicated that it would step to the side while bilateral negotiations unfold²—but it would be pointless to grant intervenor status to a mere bystander. Alternatively, CLF states that it does intend to participate in discussions over PFAS monitoring and the relationship between the NPDES permitting process and the Consent Decree; there is nothing to suggest that the Region and CLF's position on these issues diverge. Moreover, should CLF demand that settlement negotiations involve resolution of *all* issues, including those from its own appeal docket, it will result in lengthier, more complex negotiations, and would impede if not eliminate the potential for a narrow (or any) settlement with the City. This runs counter to and undermines the interests of judicial economy and efficiency.

² See CLF Motion to Intervene, at 4 n.3 (“CLF would be willing to limit its participation to the issues in this docket that relate to or affect the issues raised, or relief sought, in its petition in NPDES Appeal No. 25-04. For example, CLF does not seek to address issues raised in this docket pertaining to ammonia limits.”).

c. Consolidation of the Dockets Would Hinder Judicial Economy and Efficiency

Finally, consolidation of the two dockets makes even less sense than CLF's intervention as a party. Again, the issues in each of these dockets are distinct, and consolidation of the two would only lead to lengthier and more complicated briefing and would reduce the likelihood of resolution of the City's Petition through settlement negotiations.

From the standpoint of efficiency and economy, the Region, in close coordination with EPA's Office of General Counsel, has already made significant progress drafting its principal brief in the CLF appeal. Order Granting Extension of Time, Appeal No. 25-04 (Dec. 16, 2025). If the dockets were consolidated, the Region would need to redraft its response brief accordingly, coordinate with OGC, and seek an extension of considerably more time to do so.

III. Conclusion

For the foregoing reasons, the Board should deny CLF's Motion for Intervention as well as the Alternative Motion to Consolidate Dockets.

Dated: January 21, 2026

Respectfully submitted,

U.S. EPA – Region 1

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to the Motion for Leave to Intervene, or in the Alternative to Consolidate, in connection with *In re City of Manchester*, NPDES Appeal No. 25-05, was sent to the following persons in the manner indicated:

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