

**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

**MOTION FOR LEAVE TO INTERVENE
OR, IN THE ALTERNATIVE, TO CONSOLIDATE DOCKETS**

Conservation Law Foundation (“CLF”), petitioner in NPDES Appeal No. 25-04, pertaining to the same National Pollutant Discharge Elimination System (“NPDES”) permit (“the Permit”) at issue in this docket, respectfully requests intervenor status in this matter to protect its interests and to advance the interests of judicial economy. Alternatively, CLF requests that this docket and NPDES Appeal No. 25-04 be consolidated. In support of this motion, CLF states as follows:

Factual & Procedural Overview

1. This docket and NPDES Appeal No. 25-04 are both appeals of a NPDES permit issued by the Environmental Protection Agency, Region 1 (“the Region”) for discharges from the City of Manchester’s (“City”) wastewater treatment facility (“WWTF”). The City’s WWTF is the largest WWTF in northern New England and the only one in New Hampshire with an onsite sewage sludge incinerator.

2. During the permitting process, CLF submitted written comments and oral testimony on the Region's draft permit and draft revised permit. Its comments raised concerns about PFAS chemicals being discharged from the WWTF into the Merrimack River and emitted from the WWTF's incinerator into the air and urged, *inter alia*, the inclusion of effluent limitations and monitoring requirements for PFAS.¹

3. On November 3, 2025, the Region issued the Permit that is the subject of this docket and NPDES Appeal No. 25-04.

4. On December 3, 2025, CLF filed a Petition for Review related to the Permit, which has been docketed as NPDES Appeal No. 25-04. Its petition asserts that the Region legally erred and abused its discretion by, *inter alia*, (1) not conducting a reasonable potential analysis for PFAS, (2) weakening benthic monitoring requirements contained in the draft permit, and (3) failing to analyze and consider environmental justice concerns. *See* CLF Petition for Review at 17-46 (NPDES Appeal No. 25-04).

5. Also on December 3, 2025, the City filed a Petition for Review of its own related to the Permit. The City's petition, which is the subject of this docket, asserts, *inter alia*, that (1) a Consent Decree entered by the Region and the City in 2020 precludes the Region from imposing new and more stringent conditions in the Permit, (2) the Region should have conducted a cost-benefit analysis as part of the permitting process, and (3) the Permit's monitoring requirements for PFAS exceed the Region's authority. *See* City of Manchester Petition for Review §§ V.A, V.B, V.D. The petition also includes a statement that the City "is willing to stay this appeal and participate in Alternative Dispute Resolution." *See id.* at 25.

¹*See* CLF Petition for Review, Attachments 2, 3, 4 (NPDES App. No. 25-04).

6. On December 19, 2025, the Region filed a Motion for Stay of the Proceedings indicating the Region will be engaging in settlement discussions with the City.

7. The Region filed an assented-to motion for an extension of time to respond to CLF's petition NPDES Appeal No. 25-04 which, on December 16, 2025, the Board granted. Pursuant to the Board's order, the Region's response deadline in that docket has been extended to January 30, 2026. On December 30, 2025, the Board issued an order granting an assented-to motion for an extension of time filed by the City. Pursuant to that order, the City has a January 30, 2026 deadline for responding to CLF's petition.

Argument

8. Because neither 40 C.F.R. Part 124 nor the Board's Practice Manual address intervention, "the Board exercises its discretion when deciding whether to grant intervention and non-party briefing." *In re Dist. of Columbia Water & Sewer Auth.*, NPDES App. Nos. 05-02, 07-10, 07-11, 07-12, at 3 (EAB, Jan. 24, 2008) (*citing In re USGen New England, Inc.*, NPDES App. No. 03-12, at 8, n. 13 (EAB, Feb. 19, 2004)).

9. While the Board has stated that it is "less inclined . . . to grant intervention to parties that are neither permittees nor permitting authorities," *id.* at 4 (citation omitted), CLF's interests, and the interests of judicial economy and complete relief, warrant the requested intervention.

10. First, CLF has a direct interest in issues raised in this docket, the outcome of which—whether by means of settlement negotiations, formal alternative dispute resolution

“ADR”), or a Board decision—could severely impair those interests; and its interests will not be represented by another party to the docket.²

11. As one example, if the Region (through settlement negotiations or formal ADR) or the Board (through a final order) were to agree with the City’s argument that a 2020 Consent Decree precludes new or more stringent conditions in the Permit, CLF would be unable to achieve relief it seeks through its appeal in NPDES Appeal No. 25-04, such as a remand to the Region to conduct a “reasonable potential” analysis pertaining to PFAS and the inclusion of effluent limitations for PFAS. CLF should be allowed to participate as an intervener, including in settlement discussions, formal ADR, and/or adjudication of issues before the Board, to protect its interest in seeking this relief.³

12. As another example, if Region 1 (through settlement negotiations or formal ADR) or the Board (through a final order) were to agree with the City that the Permit’s PFAS monitoring requirements somehow exceed EPA’s authority and must be stricken from the Permit, CLF’s interest in the regulation of PFAS from the WWTF would be undermined. CLF should be allowed to protect its interest in the Permit’s inclusion of meaningful PFAS monitoring requirements by participating in settlement discussions, ADR, and/or adjudication of this docket.

13. In addition to CLF’s interest in this docket, and the potential for its interests to be adversely affected, the interests of judicial economy and of achieving complete relief warrant intervention.

² The Consolidated Rules of Practice, 40 C.F.R. § 22.11(a), provide “the Presiding Officer shall grant leave to intervene” upon a timely motion where (1) the movant has “an interest relating to the cause of action”; (2) “a final order may as a practical matter impair the movant’s ability to protect that interest”; and (3) “the movant’s interest is not adequately represented by existing parties.” While the Board is not bound by these rules, the criteria provided therein are instructive and in this case support the Board exercising its discretion to grant intervention.

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.

14. If, for example, the Region and the City were to reach a resolution through settlement discussion or ADR, the outcome thereof could result in changes to the Permit necessitating further notice and comment and, if adverse to CLF's interests, yet another appeal to the Board. If, however, CLF were granted intervenor status and were to participate in settlement discussions or ADR, there is a greater likelihood of the parties reaching complete relief as to both this docket and NPDES Appeal No. 25-04 in furtherance of judicial economy.

15. Alternatively, the Board could consider consolidating this docket and NPDES Appeal No. 25-04, with the Region, the City, and CLF having full party status in the consolidated matter.

16. Pursuant to 40 C.F.R. § 124.19(f)(2), CLF contacted counsel for the Region and the City to ascertain the Region's and City's respective position on this motion. The Region and the City object to the motion.

Conclusion and Request for Relief

For the reasons stated above, CLF respectfully requests that the Board exercise its discretion to grant CLF intervenor status in this docket or, in the alternative, consolidate this docket and NPDES Appeal No. 25-04.

Dated: January 7, 2026

/s/ Thomas F. Irwin
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CERTIFICATE OF SERVICE

I, Thomas F. Irwin, hereby certify that on January 7, 2026, a copy of the foregoing Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets has been electronically sent to the following persons, in the manner specified below:

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