

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

\_\_\_\_\_  
In the Matter of: )  
 )  
Town of Concord )  
Department of Public Works )  
 )  
NPDES Permit No. MA0100668 )  
\_\_\_\_\_ )

NPDES Appeal No. 13-08

**RESPONDENT REGION 1’S MOTION FOR LEAVE TO FILE A SUR-REPLY**

The Board has discretion to grant requests to file surreply briefs and typically does so in cases where new arguments are raised in opposing reply briefs or where further briefing would assist the Board in resolving disputed claims. *E.g., In re Arcelor Mittal Cleveland, Inc.*, NPDES Appeal No. 11-01 at 1 (EAB Dec. 9, 2011) (Order Granting in Part EPA's Motion to File Surreply, Denying Petitioner’s Request to Provide Additional Information, and Granting Oral Argument); *In re D.C. Water & Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10 to 12, at 1-2 (EAB Aug. 3, 2007) (Order Granting Leave to File Surreply and Accepting Surreply for Filing). Both factors are applicable here and counsel in favor of accepting the Region’s attached Sur-Reply in this matter.

The Region’s Sur-Reply identifies multiple attempts by Petitioner to introduce new issues and arguments into the proceeding at this late stage, and to expand upon issues that were raised in its Petition but not preserved during the public comment period. The Sur-Reply also points out various mischaracterizations by Petitioner of the permit record. Finally, the Region’s filing provides citations to the Region’s Response to

Petition, and the permit record, which will assist the Board in its deliberations, particularly as it assesses technical issues with respect to aluminum and pH.

Respectfully submitted,

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Dated: November 29, 2013