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

In re:	)
City of Manchester, New Hampshire Department of Public Works	)
Docket No. NH0100447 Appeal No. NPDES 25-05	)

OBJECTION BY THE CITY OF MANCHESTER, NEW HAMPSHIRE TO CONSERVATION LAW FOUNDATION'S MOTION FOR LEAVE TO INTERVENE OR, IN THE ALTERNATIVE, TO CONSOLIDATE DOCKETS

The City of Manchester, New Hampshire, Department of Public Works (the "City"), pursuant to 40 C.F.R. § 124.19(f)(2) objects to the Conservation Law Foundation's ("CLF") Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (the "Intervention Motion"). The Board's regulations, and precedent, do not authorize intervention by third party advocacy organizations such as CLF that lack any direct interest in the appeal. Further, CLF's intervention would oppose, not support, judicial economy, and would be prejudicial to the City as the permittee. For these reasons, and as set forth more fully below, the Intervention Motion should be denied.

BACKGROUND OF APPEALS

The City's Appeal raises factual and legal claims concerning the authority of the EPA as the permitting authority, and the legal rights and responsibilities of the City, as the permittee that is responsible for complying with it. The City's Appeal asserts that EPA (1) imposed Permit conditions that impermissibly expand on the negotiated terms of a Consent Decree entered into between EPA, the City, and the New Hampshire Department of Environmental Services

("NHDES") on July 13, 2020, and (2) exceeded its delegated authority when it imposed these and other Permit conditions on the City. Thus, the City's Appeal raises specific legal questions concerning the limits of EPA's regulatory authority and the City's rights and obligations as the permittee in this case. That is, the City's Appeal concerns issues that are germane only to EPA and the City.

In contrast to the City's and EPA's clear and legally recognized interests in the issues presented in the City's Appeal, CLF seeks to involve itself in matters for which it has no direct interest and to adjudicate legal issues that it did not preserve, comment on, or properly assert in its own Appeal of the Permit. Permitting CLF to intervene in this docket would, therefore, amount to an unlawful expansion of CLF's separate appeal. It would also complicate, not aid in, resolving the City's Appeal and would work against judicial economy.

Consistent with Board precedent the Board should deny CLF's Intervention Motion.

INTERVENTION STANDARD

The Board's regulations, 40 C.F.R. part 124 do not provide for intervention by any third party. The Board has in the past exercised its discretion to allow permittees or permitting authorities to intervene in appeals of NPDES decisions; however, "[t]he Board is less inclined…to grant intervention to parties that are neither permittees nor permitting authorities.". *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) (EAB denying intervention of interested environmental advocacy organizations); *In re USGen New England, Inc.*, NPDES Appeal No. 03-12, Order Granting Review (EAB denying CLF's motion for intervention without prejudice but permitting filing of amicus briefs); *cf.* 40 C.F.R. § 124.19(e) (establishing that "interested person[s]" may only

participate as amicus curiae). The Board routinely exercises its discretion to deny intervention for interested parties like CLF.[1] *See id.*

ARGUMENT

Pursuant to 40 C.F.R. § 124, and in accordance with the Board's established precedent, intervention in this case should be denied as a matter of law. Further, the Board should exercise discretion to deny intervention where a person or organization lacks an articulated concrete and legally recognized interest that may be affected by the outcome of the appeal or where intervention will cause delay, disrupt the proceedings, or will otherwise risk prejudice to the rights of the appellant. The Intervention Motion fails to present any good reason for the Board to deviate from its well-established precedent limiting intervention by third parties and should be denied.

I. CLF does not have any direct interest in the issues raised in the City's Appeal.

The City's Appeal involves contested conditions that bear on the City's rights and obligations arising under law and the negotiated terms of the Consent Decree between EPA, NHDES, and the City that was entered by the Federal District Court for the District of New Hampshire on July 13, 2020. *See generally* City of Manchester Petition for Review. The City, as the permittee responsible for complying with the Permit's terms and conditions, has clear, discrete, and legally recognized interests in ensuring that the contested Permit conditions do not exceed EPA's delegated authority and do not impose new or materially more burdensome requirements contrary to the terms and legal effect of the Consent Decree. The City's Appeal

[1] When facing motions for intervention by persons or organizations that are not the regulatory authority or the permittee, the Board's precedent is to deny intervention as a party, but permit, on a discretionary basis, participation as *amicus curiae*, in briefing. *See In re Tenn. Valley Auth.* CAA Docket No. 00-6 (EAB, June 16, 2000) (denying environmental groups' motion to intervene, but granting leave to file non-party briefs); *In re DPL Energy Montpelier Elec. Generating Station*, 9 E.A.D. 695, 696 (EAB 2001); *see also* 40 CFR 124.19(e) (allowing an "interested person" to file an amicus brief in any appeals pending before the Environmental Appeals Board).

seeks to conform to the law the regulatory authority of EPA's exercise of its permitting authority applicable to the City's continuing ownership and operation of the WWTF pursuant to the Permit and the Consent Decree. By contrast, CLF, an environmental advocacy organization, has not identified any direct interest in the City's Appeal. Merely stating that an entity has a general interest in an appeal, as CLF does here, is insufficient

It is true that CLF filed its own Appeal of the City's NPDES permit; yet, CLF's separate appeal confers no right (or any other good reason) for it to intervene here. CLF's appeal raises distinctly different issues concerning entirely different facts and areas of law from the City's Appeal. The only negligible commonality between the two appeals is that they each raise issues concerning per- and polyfluoroalkyl substance (PFAS); yet, CLF's argument that EPA should have performed a reasonable potential analysis pursuant to CWA 301(b)(1)(c), 33 U.S.C. § 1311(b0(1)(c) is entirely unrelated to the City's arguments concerning PFAS monitoring. Since CLF's appeal raises distinct and entirely separate issues involving PFAS, CLF's interests are insufficient to warrant intervention. It remains that CLF's generalized interest in PFAS, and the City's Appeal, is no more than the interest shared by the general public.

CLF's concern that denying intervention would impair its interest in the Appeal because it would not be able to participate in settlement discussion or otherwise achieve relief following an order of the Board is similarly without merit. Regardless of the outcome of the City's Appeal, whether remanded to EPA, resolved by settlement of the Parties, or resolved by order of the EAB, CLF would have the opportunity, like any member of the public, to further appeal such decision to the EAB or the courts as applicable.

Further, as a matter of policy, allowing intervention simply because an interested party worries an outcome may be adverse to its general interests as an advocacy organization would

improperly expand intervention rights and undermine the rights of permittees to seek relief of disputed permit decisions.

Finally, intervention is inappropriate where the Board's regulations already provide an avenue for interested parties to state their positions. 40 C.F.R. § 124.19(e), titled "Participation by amicus curiae" allows any interested party to file an amicus brief in a proceeding before the Board. Should this matter proceed to adjudication, CLF will have the opportunity to represent its claimed interests in briefing before the Board, should it choose to do so.

II. Intervention by CLF is not in the interests of justice, would impair the prompt and orderly conduct of this proceeding, and would result in undue prejudice to the City as permittee.

CLF's unsupported statement that intervention will serve judicial economy is contravened by the plain reality that CLF's participation will necessarily cause delay and will disrupt EPA and the City's efforts to resolve the matters on Appeal. CLF injecting itself into settlement discussions on issues unrelated to CLF and its alleged interests would undermine the ability of EPA and the City to reach a mutually agreeable resolution. Further, CLF's representation that it would not involve itself in matters for which it does not claim an interest should be given little consideration. The notion that EPA and the City would bilaterally negotiate certain elements of the Appeal while CLF would involve itself in others is patently illogical. A settlement, by its nature, requires the agreement of all parties. Even limiting CLF's involvement would require bifurcated settlement discussions and would unnecessarily and unreasonable complicate the City's and EPA's efforts to resolve the Appeal.

Further, should CLF seek to resolve its own appeal claims through settlement with the City and EPA would require more protracted discussions, and would be prejudicial to the City by unlawfully expanding the City's Appeal to require consideration of new and additional legal issues not raised by the City.

On that same point, if the City's Appeal were to proceed to adjudication, allowing CLF's intervention would effectively allow CLF to expand its separate appeal allowing CLF to assert new arguments on issues it did not challenge, did not comment on, or otherwise did not express any interest in. As a legal matter, allowing CLF to adjudicate issues it did not comment on or preserve in its appeal would violate 40 C.F.R. § 124.19(a)(4)(i) requiring that petitions "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." 40 C.F.R. § 124.19(a)(4)(i); *see also* 40 C.F.R. § 124.19(a)(4)(ii) (requiring petitioners demonstrate that "each issue raised in the petition was raised during the public comment period."). Granting intervention would contravene this express regulatory requirement by allowing CLF to present arguments on matters that it did comment on, preserve, or appeal.

III. Consolidation of two distinct petitions would also hinder judicial economy.

CLF identifies no legal authority supporting its request that its separate appeal be combined with the City's Appeal. For the same reasons that CLF's intervention would disrupt the orderly resolution of the City's Appeal, consolidation of the different appeals is similarly not in the interests of justice, would be unduly burdensome, and would prejudice the City. CLF's passing suggestion—without support—that the appeals might be consolidated ignores the reality that consolidation would materially expand the scope of the City's Appeal and, therefore, disrupt what might otherwise be an efficient resolution through settlement with EPA.

That both appeals involve the same Permit does not merge the issues or create a shared legal interest. The separate petitions ask the Board to resolve different questions of law and fact and grant different forms of relief. Thus, the consolidation of CLF's separate and distinct appeal in this matter would necessarily introduce new factual and legal disputes, result in an extended

case schedule, and impose new and unreasonable costs on the City. CLF's separate arguments should be, and will be, fairly and properly addressed through its own petition.

There is no legal authority supporting consolidation of two competing petitions. The Board should deny CLF's alternative request.

CONCLUSION

For the foregoing reasons, the City requests that the Board deny CLF's unsupported and illogical request to intervene in the City's Appeal or to consolidate the appeals in the alternative. CLF is not entitled to intervene in the Petition as a matter of law. CLF may protect its alleged interests by filing briefing before the Board if it elects to participate as amicus curiae. For these and the reasons set forth in this Objection, the City opposes CLF's intervention and its alternative request for consolidation and, consistent with the Board's precedent, asks that the Board deny the Intervention Motion.

STATEMENT OF COMPLIANCE WITH WORD LIMITATIONS

I hereby certify that the City's Objection to Conservation Law Foundation's ("CLF") Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets, in the matter of City of Manchester, NPDES Appeal No. 25-04, contains fewer than 7,000 words in accordance with 40 C.F.R. § 124.19(f)(5).

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CERTIFICATE OF SERVICE

I, Adam M. Dumville, hereby certify that on this 29th day of January 2026, I served a copy of the foregoing Motion on the parties identified below by the Environmental Appeals Board electronic filing system, U.S. first-class mail, postage pre-paid and via electronic mail to:

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Dated on the 29th of January 2026.

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