

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

In re:)	
)	
GSP Merrimack Station)	NPDES Appeal No. 20-06
)	
NPDES Permit No. NH0001465)	
)	

ORDER GRANTING MOTION FOR LEAVE TO FILE SURREPLY

On November 6, 2020, EPA Region 1 (“Region”) filed a motion seeking leave to file a surreply brief in response to the reply brief filed by Petitioner GSP Merrimack LLC (“GSP”). *See* EPA Region 1 Motion for Leave to File Sur-Reply (Nov. 6, 2020). In support, the Region contends that GSP raises new arguments in its reply brief, contrary to the rules governing this appeal. *See* 40 C.F.R. § 124.19(c)(2) (“Petitioner may not raise new issues or arguments in the reply.”). The Region states that it contacted counsel for GSP to ascertain its position on the motion and that GSP replied, “Petitioner takes no position on the motion for leave, but contends that the Petitioner’s reply brief did not go outside the scope of the Petition and EPA’s response.” EPA Region 1 Motion for Leave to File Sur-Reply 2 (Nov. 6, 2020).

The Environmental Appeals Board possesses discretionary authority to grant a request to file a surreply brief. 40 C.F.R. § 124.19(n). The Board typically grants such requests where allegations arise that a reply brief raises new arguments or where further briefing would otherwise assist the Board in resolving disputed issues. *See, e.g., In re Ariz. Pub. Serv. Co.*, NPDES Appeal No. 19-06, at 2 (EAB Jan. 29, 2020) (Order Granting Motion for Leave to File Surreply); *In re ArcelorMittal 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).

Based upon the Region's representations, the Board determines that a surreply would be helpful in the Board's decisionmaking process and therefore **GRANTS** the Region's motion for leave to file a surreply brief. The Board further **ORDERS** that the Region's surreply brief be filed on or before **November 16, 2020**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line and a smaller, more complex signature.

Dated: November 10, 2020

By: _____
Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **ORDER GRANTING MOTION FOR LEAVE TO FILE SURREPLY** in the matter of GSP Merrimack Station, NPDES Appeal No. 20-06, were sent to the following persons in the manner indicated:

By Email:

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Dated: **Nov 10 2020**



Eurika Durr
Clerk of the Board