

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

	)	
In re:	)	
	)	
City of Lowell	)	NPDES Appeal No. 19-03
	)	
NPDES Permit No. MA0100633	)	
	)	

**ORDER GRANTING SURREPLY**

By motion filed January 6, 2020, U.S. Environmental Protection Agency, Region 1 (“Region”), seeks leave to file a surreply brief responding to arguments that the Region alleges that the petitioner in this proceeding, the City of Lowell (“City”), raised for the first time in its reply brief in contravention of 40 C.F.R. § 124.19(c)(2). The Region requests that it be given the opportunity in a surreply brief “to identify these arguments and to concisely respond to them.” EPA Motion for Leave to File Surreply 2 (Jan. 6, 2020) (“Motion”). According to the Region, it contacted the City prior to filing this motion and the City indicated it objects to the Region filing a surreply brief.

The Environmental Appeal Board has discretion to grant requests for surreply briefs and has typically exercised that discretion to allow surreply briefs where it is alleged that new arguments are raised in reply briefs or where further briefing would assist the Board in resolving disputed claims. *See 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) (citing cases); *see also* 40 C.F.R. § 124.19(n).

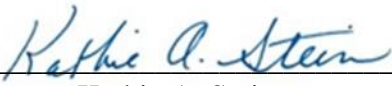
As noted, the Region alleges in its motion that the City has raised new arguments in its reply brief. Further, the Region argues that allowing the Region to file a surreply brief would “promote efficiency and assist the Board” because “the new arguments pertain in large measure to technical issues, which must be evaluated against a complex and extensive permit record.” Motion at 2. Finally, the Region asks that the deadline for filing a surreply brief be January 10, 2020. The Region points out that following the filing of the City’s reply brief on December 23, 2019, federal government offices were officially closed for holidays on three of the next seven weekdays and key technical and legal staff additionally had previously scheduled leave during this time period.

Upon examination of the filings in this case, the Board concludes that a surreply brief would be helpful in its decisionmaking process and that good cause exists for granting the Region’s motion for leave to file such a brief. Accordingly, the Board hereby **GRANTS** the Region’s request to file a surreply brief limited to identifying new issues raised in the City’s reply brief and concisely responding to those issues. The Board further **ORDERS** that the Region’s surreply brief be filed on or before Friday, January 10, 2020.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: January 7, 2020

By:   
Kathie A. Stein  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I certify that copies of the *Order Granting Surreply* in the matter of City of Lowell, NPDES Appeal No. 19-03, were sent to the following persons by email:

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Dated: January 7, 2020



Eurika Durr  
Clerk of the Board