



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

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In re City of Manchester	)	NPDES Appeal No. 25-05
	)	
NPDES Permit No. NH0100447	)	
	)	
	)	

**ORDER DENYING MOTION FOR LEAVE TO INTERVENE AND TO
CONSOLIDATE DOCKETS**

Issued March 13, 2026

Before Environmental Appeals Judges Aaron P. Avila and Ammie Roseman-Orr.

Order of the Board by Judge Avila:

The City of Manchester, New Hampshire filed the above-captioned petition for review of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by U.S. Environmental Protection Agency Region 1 to the City of Manchester. Conservation Law Foundation (“CLF”) filed a separate petition for review of the same permit, docketed at NPDES Appeal No. 25-04. CLF now moves to intervene in this matter, or in the alternative, to consolidate the two petitions for review. Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets (Jan. 7, 2026) (“Motion”). Petitioner City of Manchester and Respondent EPA Region 1 oppose the Motion. 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 (Jan. 29, 2026); EPA Region 1’s Opposition to the Motion for Leave to Intervene, or in the Alternative to Consolidate Dockets (Jan. 21, 2026). Because the regulations do not provide for intervention and CLF may assert its interests through a variety of mechanisms, the Board denies the Motion.

The regulation governing permit appeals specifies who may participate in an appeal. 40 C.F.R. § 124.19. In addition to the petitioner and the permit issuer, a permit applicant or a State or Tribal authority where the permitted facility is located may participate in the appeal by filing a notice of appearance and response to the petition. *Id.* § 124.19(b)(3)-(4). Any other “interested person” may file an amicus brief. *Id.* § 124.19(e). Nowhere do the rules provide for motions to intervene or confer party status on entities other than those listed in 40 C.F.R. § 124.19(a) and (b). *Id.* § 124.19.

The provisions authorizing participation by permittees and State or Tribal authorities were added to the regulation in 2013 and reflected prior Board precedent. Revisions to Procedural Rules To Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board, 78 Fed. Reg. 5281, 5283 (Jan. 25, 2013). Prior to the 2013 amendments, the Board typically granted requests for intervention by permittees and, in the NPDES context, entities with authority to regulate water quality. *See In re D.C. Water & Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10, 07-11, & 07-12, at 3-4 (EAB Jan. 24, 2008) (Order Denying Motion for Leave to Intervene); *In re USGen New England, Inc.*, NPDES Appeal No. 03-12, at 7-8 n.13 (EAB Feb. 19, 2004) (Order Granting Review), *pet. for review dismissed for lack of juris. sub nom. Rhode Island v. EPA*, 378 F.3d 19 (1st Cir. 2004). The Board was “less inclined, however, to grant intervention to parties that are neither permittees nor permitting

authorities.” *D.C. Water & Sewer Auth.*, NPDES Appeal Nos. 05-02, 07-10, 07-11, & 07-12, at 4; see *In re City of Marlborough*, *In re Town of Maynard*, *In re Town of Westborough*, NPDES Appeal Nos. 05-05 & 05-09, 05-06 & 05-12, 05-07 & 05-08 (EAB Oct. 18, 2005) (Order Denying Intervener Status and Allowing Submission of Amicus Brief) (denying CLF’s request for intervener status and allowing CLF to file an amicus brief); *USGen New England, Inc.*, NPDES Appeal No. 03-12, at 7-8 (same). In denying intervenor status to other entities, the Board concluded that filing briefs as amicus curiae would provide a sufficient degree of participation. *City of Marlborough*, NPDES Appeal Nos. 05-05 & 05-09, 05-06 & 05-12, 05-07 & 05-08, at 2 n.2; *USGen New England, Inc.*, NPDES Appeal No. 03-12, at 8 n.13.

CLF argues that intervention in this appeal is necessary to protect its interests. Motion at 3-4. Specifically, CLF argues that without its participation, the Region could agree through settlement discussions with the City, or the Board could determine, that (1) the 2020 Consent Decree between the City and EPA precludes more stringent conditions in the permit, or (2) that the per- and polyfluoroalkyl substances (“PFAS”) monitoring requirements of the permit exceed EPA’s authority. *Id.* at 4. CLF asserts that either outcome would impair its ability to obtain the relief it seeks in NPDES Appeal No. 25-04. *Id.* Neither argument convinces us that intervention is necessary.

First, CLF has already filed a separate petition for review of the permit at issue. Petition for Review by Conservation Law Foundation, *In re City of Manchester*, NPDES Appeal No. 25-04 (Dec. 3, 2025) (“CLF Pet.”). In that appeal, CLF has raised its objections to the permit and has the opportunity to present its views to the Board. Further, by filing a petition CLF has preserved its right to seek judicial review of the permit. See 40 C.F.R. § 124.19(l)(1) (requiring a petition to the Board as a prerequisite to judicial review).

Second, if the Region and the City agree in settlement negotiations to make changes to the permit, the Region would be required to follow applicable procedures in 40 C.F.R. part 124. *See id.* §§ 124.10(a), 124.19(j). Upon issuance, the revised permit would be subject to a new petition for review. *See id.* § 124.19(a). CLF would have the opportunity to file a petition for review with the Board of any revised permit.

Third, CLF can participate in this matter as amicus curiae. *Id.* § 124.19(e). This matter has been stayed and response briefs have not yet been filed. Thus, if the current stay is lifted and the Board proceeds to adjudicate the issues relating to the 2020 Consent Decree and PFAS monitoring, CLF will have an opportunity to present its views to the Board in the form of an amicus brief. *See id.* Given the other circumstances of this appeal, the Board concludes that filing a brief as amicus curiae in accordance with the regulations is sufficient for CLF to protect its interests. *See City of Marlborough*, NPDES Appeal Nos. 05-05 & 05-09, 05-06 & 05-12, 05-07 & 05-08, at 2 n.2; *USGen New England, Inc.*, NPDES Appeal No. 03-12, at 8 n.13.

CLF requests, in the alternative, that the Board consolidate the two appeals. Motion at 5. The Board has consolidated cases where doing so is in the interest of administrative efficiency. *See In re AMVAC Chem. Corp.*, FIFRA Appeal Nos. 22-01 & 22-02 (EAB Aug. 10, 2022) (Order Granting Leave to File Reply Brief and Consolidating Cases). Here, the petitions in the two appeals raise different issues. Petition for Review of City of Manchester Wastewater Treatment Facility and 15 Combined Sewer Overflow (CSO) Outfalls NPDES Permit Issued by Region 1, at 5-24 (Dec. 3, 2025) (“City’s Pet.”); CLF Pet. at 17-46. While both petitions raise issues concerning PFAS, the two petitions make very different arguments. The City alleges in its petition that the Region *exceeded its authority* in even requiring PFAS monitoring. City’s Pet. at 20-23. CLF, on the other hand, alleges that the Region failed to conduct a required reasonable

potential analysis of PFAS. CLF Pet. at 22-29. Furthermore, the Region and the City have responded to CLF's petition and that appeal will soon be fully briefed. Considering the different issues raised in the petitions and the current status of each appeal, the Board has decided not to consolidate these appeals in the interest of administrative efficiency.

For the foregoing reasons, the Motion for Leave to Intervene or, in the Alternative, to Consolidate Dockets, is **DENIED**. This case shall proceed in accordance with the Board's February 20, 2026 Order Extending Stay of Proceedings.

So ordered.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motion for Leave to Intervene and to Consolidate Dockets* in the matter of City of Manchester, NPDES Appeal No. 25-05, were sent to the following persons on March 13, 2026 in the manner indicated:

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