

JUN 27 2022

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

NH DES
LEGAL UNIT

Docket No. 20-14 WMC

In re: Conservation Law Foundation, Inc. Appeal

**ASSENTED-TO MOTION FOR LEAVE TO FILE REPLY AND SURREPLY PAPERS
TO NCES'S MOTION FOR REHEARING AND MOTION FOR WAIVER OF RULES**

Pursuant to Env-WMC 204.15, North Country Environmental Services, Inc. ("NCES") moves the council for leave permitting the parties to file reply and surreply papers in response to NCES's pending motion for rehearing. The other parties to this appeal assent to the relief sought by Paragraphs A through E of this motion.

1. NCES filed a motion for rehearing on June 10, 2022. The motion was 44-pages long and addressed significant legal and factual issues for the council's consideration. CLF and NHDES filed objections to NCES's motion on June 24, 2022. These deadlines were imposed by the council's May 31, 2022 order on NCES's assented-to motion for waiver of rules. CLF also filed a motion to strike NCES's exhibits to the motion for rehearing on June 24, 2022.

2. NCES wishes to file replies to the other parties' objections to the motion for rehearing, and after conferring with counsel for the other parties, NCES understands that CLF and NHDES wish to have the opportunity to file replies and surreplies, if necessary, to complete the briefing on this motion.

3. The council's procedural rules do not provide a mechanism or procedure for filing replies or surreplies in connection with a motion presented to the council. Env-WMC 204.15(f) permits a "response" akin to an objection by a party adversely affected by the ruling sought in a motion, but the rules do not address briefing beyond such a response. NCES thus seeks leave

from the council to permit the parties to file replies and surreplies to fully brief the issues raised in NCES's motion for rehearing.

4. Permitting additional briefing will advance the issues of justice and fairness in this matter and ensure that the council has the benefit of comprehensive arguments when considering NCES's motion. The New Hampshire Supreme Court has observed that "administrative agencies should have a chance to correct their own alleged mistakes before time is spent appealing from them." *In re Hardy*, 154 N.H. 805, 811 (2007) (citation omitted). Permitting the council an opportunity to review such decisions also ensures that a "court may have the benefit of the [council's] judgement in hearing the appeal" if it proceeds to judicial review. *Dziama v. City of Portsmouth*, 140 N.H. 542, 544 (1995) (examining motions for rehearing in context of zoning appeals). Permitting the parties an opportunity to present responses to one another's arguments will assist the council in determining whether mistakes were made that require reconsideration based on fully developed arguments in the papers, and it will also ensure that matters are only raised to the supreme court after the council has had an opportunity to consider the issues and explain its reasoning in ruling on NCES's motion.

5. The relief sought by this motion is also consistent with past practice throughout this case. For example, CLF filed a reply in support of its motion for reconsideration of the order on NCES's motion to dismiss, and NCES was permitted to file a reply in support of its motion to compel. *See* CLF Reply (9/30/21) and NCES Reply (12/15/21).

6. NCES also seeks a waiver of Env-WMC 204.15(f) to the extent that this rule requires NCES to file its response to CLF's June 24, 2022 motion to strike within five days of the motion's filing. NCES proposes extending that deadline to July 6, 2022. NCES also proposes a conforming extension of time for CLF's reply to this objection to July 18, 2022.



7. A waiver will be granted if “no party objects to the waiver and if the council determines that good cause for the waiver exists and the interests of the parties to the proceeding will not be prejudiced by the waiver.” Env-WMC 203.15.

8. Good cause exists for this waiver as NCES will also be briefing replies to the detailed objections filed by NHDES and CLF regarding the motion for rehearing. The requested waiver will extend the deadline and thus ensure that NCES has the time and resources to answer both the objections to the motion for rehearing and CLF’s separate motion. One of NCES’s attorneys is away on vacation for the week of June 27, 2022, and the Fourth of July holiday is next Monday. Further, a family health issue recently occurred that impacts NCES’s counsel, and thus this additional time will permit NCES to address the issues raised in CLF’s papers while also tending to unforeseeable family matters.

9. NHDES and CLF assent to the proposed waiver, so there is no objection, and their interests will not be prejudiced by this moderate extension of time that is consistent with the other deadlines requested herein for briefing of the motion for rehearing.

WHEREFORE, NCES respectfully requests that the council:

- A. Permit the parties to file replies to any objection filed in connection with NCES’s motion for rehearing on or by July 6, 2022;
- B. Permit the parties to file surreplies to any replies filed in connection with NCES’s motion for rehearing on or by July 18, 2022;
- C. Waive Env-WMC 204.15(f) and permit NCES to file its response to CLF’s motion to strike on or by July 6, 2022;
- D. Permit the parties to file replies in connection with CLF’s motion to strike on or by July 18, 2022; and
- E. Grant such other relief as justice requires.

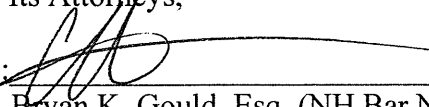
Respectfully submitted,

NORTH COUNTRY ENVIRONMENTAL
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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with the Pre-hearing Order issued on this matter on June 8, 2021, the within document was this day sent by e-mail transmission to:

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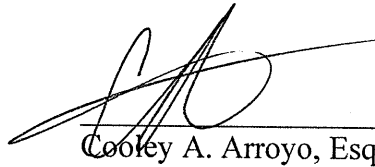
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