

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

In the Matter of:

Joint Base Lewis-McChord  
Municipal Separate Storm Sewer  
System

United States Department of the  
Army, Joint Base Lewis-McChord,  
*Permit Applicant*

NPDES Permit No. WAS-026638

NPDES Appeal No. 13-09

**UNOPPOSED MOTION FOR LEAVE TO PARTICIPATE AS AMICUS AND**  
**EXTENSION OF TIME TO APRIL 15, 2014**

Pursuant to 40 C.F.R. § 124.19(e), the State of Washington, Department of Ecology (Ecology) respectfully petitions for leave to participate as amicus curiae in the above-captioned matter and for an extension of time to file such a brief until April 15, 2014.

Ecology has a unique interest in this matter. Under Washington state law, Ecology is designated as the state water pollution control agency for all purposes of the federal Clean Water Act. RCW 90.48.260. In this role, Ecology is responsible for administering the NPDES program in Washington, and for issuing Section 401 certifications to provide reasonable assurance that federal licenses or permits will not violate applicable water quality standards and

other appropriate requirements of state law.<sup>1</sup> *Id.*; 33 U.S.C. 1341(d). *See* 40 C.F.R.

121.2(a)(3)-(4). In this case, Ecology provided a Section 401 certification subject to a number of conditions for NPDES Permit No. WAS-026638 (“the Permit”). The conditions Ecology included in the 401 certification not only insure that stormwater discharges from Joint Base Lewis-McChord (JBLM) will not violate water quality standards and other appropriate requirements of state law, but also insure that stormwater at JBLM will be managed in a manner that is consistent with the municipal stormwater NPDES permits Ecology recently issued to municipalities in Washington, including municipalities that surround JBLM and discharge into the same waterbodies as JBLM.

The Environmental Protection Agency (EPA) incorporated Ecology’s 401 conditions into the Permit, as EPA was required to do, and JBLM now challenges many of these conditions. JBLM alleges some of the conditions in Ecology’s 401 certification exceed Ecology’s authority under the Clean Water Act because, according to JBLM, the challenged conditions do not implement appropriate requirements of state law. *Petition For Review of NPDES Permit For Joint Base Lewis- McChord Municipal Separate Storm Sewer System And Request For Oral Argument. Petition For Review 22-30, Filing #: 7.* However, JBLM did not appeal Ecology’s 401 certification conditions to the Washington State Pollution Control Hearings Board under applicable state procedures, and JBLM’s appeal to the Environmental Appeals Board (Board) is not the proper forum for such challenges. Ecology has a unique interest in participating in this matter in order to explain the requirements of Washington state law, how the challenged conditions from Ecology’s 401 certification are necessary to insure that stormwater discharges

---

<sup>1</sup> Ecology’s NPDES delegation does not include the authority to issue NPDES Permits to federal facilities in Washington.

from JBLM meet the requirements of state law, and why JBLM is precluded from challenging Ecology's 401 certification before the Board. Ecology respectfully requests that the Board grant Ecology's motion to participate as an amicus in this appeal.

The current deadline for filing an amicus brief under the Board's rules is January 30, 2014.<sup>2</sup> However the Board issued an order on December 5, 2013 staying proceedings in this matter until March 31, 2014 to allow the parties to participate in the Board's Alternative Dispute Resolution Program. In light of the current stay, and in order to promote efficiency for the Board and the parties, Ecology requests an extension of time to file its amicus brief until April 15, 2014, 15 days after the expiration of the stay of proceedings. This extension will allow Ecology to prepare an adequate and helpful response to the arguments raised by JBLM, and will not prejudice the parties given the fact that the proceedings have been stayed until March 31, 2014 while the parties participate in Alternative Dispute Resolution. Ecology respectfully requests that the Board grant Ecology's motion for an extension of time to April 15, 2014 to file Ecology's amicus brief.

///

///

---

<sup>2</sup> The deadline for filing amicus briefs is 15 days after the filing of the response brief. 40 C.F.R. § 124.19(e). Respondent U.S. EPA Region 10 filed its response brief on January 15, 2014.

Counsel for Ecology has contacted Counsel for EPA Region 10 and Counsel for JBLM regarding Ecology's requests to participate as an amicus and for an extension of time to April 15, 2014 to file Ecology's amicus brief. Counsel for JBLM and EPA Region 10 have both confirmed that they do not oppose Ecology's requests.

DATED this 22nd day of January 2014.

ROBERT W. FERGUSON  
Attorney General

s/ Christopher H. Reitz  
RONALD L. LAVIGNE, WSBA #18550  
CHRISTOPHER H. REITZ, WSBA #45566  
Attorneys for Proposed Amicus  
State of Washington,  
Department of Ecology  
P.O. Box 40117  
Olympia, WA 98504-0117  
(360) 586-6770  
ronaldl@atg.wa.gov  
chriss@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Unopposed Motion for Leave to Participate as Amicus and Extension of Time to April 15, 2014 was sent to the following persons, in the manner specified, on the date below:

By electronic filing to:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, NW  
Mail Code 1103M  
Washington, DC 20460-0001

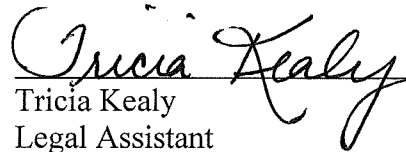
By electronic and U.S. Mail to:

Kari L. Hadley  
Department of the Army  
Environmental Litigation Center  
9275 Gunston Road, Suite 4301  
Fort Belvoir, VA 22060  
Email: kari.l.handley.mil@mail.mil

Courtney Weber  
Assistant Regional Counsel  
EPA Region 10  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, WA 98101  
Email: weber.courtney@epa.gov

Jan Hasselman  
Janette K. Brimmer  
Earthjustice  
705 Second Ave., Suite 203  
Seattle, WA 98104  
Email: jhasselman@earthjustice.org

DATED: January 22, 2014

  
Tricia Kealy  
Legal Assistant