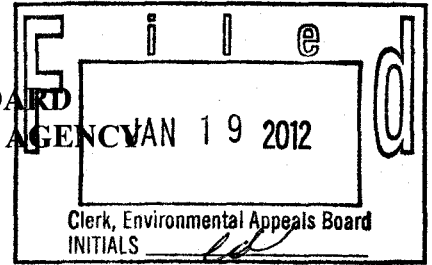


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
))
Government of the District of Columbia,) NPDES Appeal Nos. 11-05 & 11-06
Municipal Separate Storm Sewer System))
))
NPDES Permit No. DC0000221))
_____)

ORDER TO SHOW CAUSE

On November 4, 2011, the District of Columbia Water and Sewer Authority (“DC Water”) and the Wet Weather Partnership (“WWP”) jointly filed a petition requesting that the Environmental Appeals Board (“Board”) review a final municipal separate storm sewer system (“MS4”) NPDES permit issued by the United States Environmental Protection Agency Region 3 (“Region 3”) to the Government of the District of Columbia.¹ *See generally* DC Water and WWP Petition for Review (“Joint Petition”). In the Joint Petition, DC Water asserts that it is a co-permittee. *Id.* at 1. Petitioners also state that they are challenging “several changes [that] were made to the final permit which were not identified in the draft.” *Id.* at 2.

The District Department of the Environment (“DDOE”) subsequently filed a motion with the Board requesting that it be allowed to intervene in this proceeding and file a response to both petitions for review, including the Joint Petition. *See* DDOE’s Motion to Intervene as Party Respondent and Request to Respond to Petitions for Review. DDOE claimed that *it* (and not DC

¹ The Friends of the Earth, Anacostia Riverkeeper, Inc., Potomac Riverkeeper Inc., and Natural Resources Defense Council, Inc. also filed a petition for review with the Board on that date, NPDES Appeal Number 11-06.

Water) is the official representative of the permittee, the Government of the District of Columbia. *Id.* at 2.

Noting the seemingly inconsistent statements between DC Water's petition and DDOE's motion with respect to which entity represents the permittee in this matter, the Board directed the Attorney General of the District of Columbia to answer several questions. *See* Order of November 29, 2011. In response to the Board's Order, the Attorney General of the District of Columbia, through the General Counsel's office of DDOE, informed the Board that "DDOE is the agency, designated by the Government [of the District of Columbia]/Permittee, with responsibility for managing the MS4 Stormwater Management Program and all activities necessary to comply with the requirements of the permit." DDOE's Response to Order Requiring Additional Briefing at 3 (Jan. 12, 2012). DDOE further stated that "DDOE, through its Office of the General Counsel is delegated the responsibility, by the Attorney General, for representing the Government [of the District of Columbia]/Permittee in all matters related to the MS4 permit," *id.*, and that "DC Water is not a permittee, does not have the legal authority to file a petition with the Board under 40 C.F.R. § 124.19, and even if it could act as permittee, cannot take a position that is contrary to that of DDOE," *id.* at 9; *accord id.* at 4-5. Finally, DDOE, through the Attorney General's office, requested that the Board dismiss DC Water as a party in this matter. *Id.* at 9.

In light of the above, the Board **DIRECTS** DC Water to show cause why it should not be dismissed as a petitioner in this case. Any such response to this show cause order must be filed by January 26, 2012.

The Board further notes that WWP has not asserted in the Joint Petition a separate basis for its standing to file a petition challenging this permit under 40 C.F.R. Section 124.19(a). WWP does not assert that it submitted comments on the draft permit at issue in this matter or participated in the public hearing on the draft permit (if one was held). Nor do the exhibits submitted by DC Water and WWP indicate that WWP submitted comments on the draft permit. See Joint Petition Ex. A, Responsiveness Summary at 1-2 (list of commenters on draft permit). A person who has not participated in the permit process leading up to the final permit decision, either by filing comments or participating in a public hearing (if one was held), may only file a petition for review with respect to "changes from the draft to the final decision." 40 C.F.R. § 124.19(a); *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 704-05 (EAB 2002); *In re Am. Soda, LLP*, 9 E.A.D. 280, 288-89 (EAB 2000). The sole condition the Joint Petition identifies as a change from the draft to the final permit is condition 4.3.1.3. See Joint Petition at 12. WWP is therefore **DIRECTED** to show cause why it should be permitted to challenge any other condition(s) of the permit. WWP's response to this Order must be filed by January 26, 2012.

So ordered.

Date:

1/19/12

ENVIRONMENTAL APPEALS BOARD



Catherine R. McCabe

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order to Show Cause in the matter of the Government of the District of Columbia, NPDES Appeal Nos. 11-05 and 11-06, were sent to the following persons in the manner indicated:

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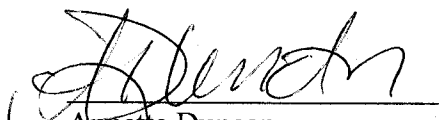
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Dated: JAN 19 2012


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Secretary