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ENVIR. APPEALS BOARD

Stewart T. Leeth
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May 29, 2007

BY HAND

Eurika Durr
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G. Street, NW
Suite 600
Washington, D.C. 20005

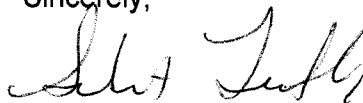
Re: NPDES Appeal No. 07-12
NPDES Permit No. DC0021199

Dear Ms. Durr:

Enclosed for filing is the original and five copies of the District of Columbia Water and Sewer Authority's Motion for Leave to Intervene as a Party Respondent and Request to Respond to Third Party Petitioners' Petition for Review regarding NPDES Permit No. DC0021199, and a proposed order. We ask that a copy of the Petition be date-stamped and returned to the courier.

Thank you for your assistance.

Sincerely,



Stewart T. Leeth

STL/csr

Enclosures

cc: Avis M. Russell, General Counsel, D.C. Water and Sewer
Counsel of Record

May 29, 2007
Page 2

Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

#4560318

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U.S. EPA.
BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 2007 MAY 29 PM 3:21

ENVIR. APPEALS BOARD

In the Matter of:)

District of Columbia Water and Sewer)
Authority,)

NPDES Permit No. DC0021199)
_____)

NPDES Appeal No. 07-12

**THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY'S
MOTION FOR LEAVE TO INTERVENE AS A PARTY RESPONDENT AND
REQUEST TO RESPOND TO THIRD PARTY PETITIONERS' PETITION FOR
REVIEW**

Pursuant to 40 C.F.R. § 124.19 and Environmental Appeals Board ("EAB" or "Board") Practice Manual §§ III.D.1 and D.4, the District of Columbia Water and Sewer Authority ("WASA") hereby (1) moves for leave to intervene as a Respondent in the captioned petition for review filed by Friends of the Earth and Sierra Club ("Petitioners") and (2) requests leave to file a response to the Petitioners' petition. In support of its motion, WASA submits the following.¹

1. Petitioners seek review of certain provisions of NPDES Permit No. DC0021199 (the "Permit"), issued to WASA on April 5, 2007, which authorizes the discharge treated wastewater from its Blue Plains Wastewater Treatment Plant ("Blue Plains") under the terms and conditions set forth in the Permit.

¹ WASA has filed a separate petition for review seeking review of portions of the same Permit in the matter styled *In re NPDES No. DC0021199*, NPDES No. 07-11. WASA's petition does not seek review of the condition that is the subject of the Petitioners' petition.

2. Petitioners' petition does not identify WASA as a Respondent.

3. Petitioners claim that a condition was omitted from the Permit and that this omission violates the Clean Water Act. Specifically, Petitioners challenge EPA's decision "eliminating the language [in the Permit] prohibiting discharges in excess of any limitation necessary to meet water quality standards of the District of Columbia." Petition for Review, p. 9.

4. The EAB typically grants intervention to permittees pursuant to an appropriate motion. *See, e.g., In re Aurora Energy, L.L.C.*, NPDES Appeal No. 03-11, slip op. at 1 (EAB, Oct. 21, 2003) (permittee's motion for leave to intervene granted); *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 470 (EAB 2002) (permittee's motion to intervene and file response to petition granted). This sensible approach is consistent with well-established judicial principles for the "of right" and "permissive" intervention requirements of Federal Rule of Civil Procedure 24.² Intervention is construed broadly as a tool to fully litigate the issues with all interested parties in one proceeding rather than encouraging piecemeal litigation. *NRDC v. Costle*, 561 F.2d 904, 910-11 (D.C. Cir. 1977); *see also Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) ("liberal intervention is desirable to dispose of as much of a controversy 'involving as many apparently concerned persons as is compatible with efficiency and due process'" (citation omitted)).

² Under Fed. R. Civ. P. 24(a)(2), an applicant is entitled to intervene

when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Under Fed. R. Civ. P. 24(b)(2), permissive intervention is appropriate when "an applicant's claim or defense and the main action have a question of law or fact in common."

5. The EAB also “generally allow[s] the permit applicant to respond to a petition filed by a third party petitioner if the permit applicant has filed a request to respond.” EAB Practice Manual § III.D.1.

6. Here, WASA will be substantially and specifically affected by the outcome of this proceeding. WASA operates Blue Plains and is the holder of the Permit. As such, WASA has overall responsibility for compliance with the Permit. Any relief afforded in this proceeding will directly and substantially affect WASA by imposition of new or modified legal obligations under the Permit. If the relief requested is granted, WASA could be exposed to significant additional liabilities associated with implementation of its Long-Term Combined Sewer Overflow Control Plan. This, in turn, could have profound impacts on WASA and its ratepayers.

7. Moreover, while WASA and EPA both have similar goals in defending portions of the Permit, their interests are not the same in this case because WASA and its ratepayers, rather than EPA, will bear the burden of the liabilities and costs of compliance with the Permit if the Petitioners are successful. *See NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (noting the differing scope of interests between regulated industries, whose principal interest is in protecting their industries, and the more narrowly focused interest of regulatory agencies in implementing the law); *Kentuckians for the Commonwealth v. Rivenburgh*, 204 F.R.D. 301, 306 (S.D.W. Va. 2001) (interests of regulated industry is diverse from those of the regulator). Further, WASA is also uniquely situated to provide the Board with insight and perspective into all the issues raised in the petition for review.

8. WASA's motion and request to respond is also timely. This motion follows closely upon the filing of Petitioners' petition on May 7, 2007. No substantive proceedings have occurred. Assuming its motion and request is granted, WASA will file an appropriate and timely response within the timeframe ordered by the Board and will comply with whatever deadlines the EAB imposes in this case. Therefore, WASA's participation will not delay this proceeding in any way.


9. In sum, by analogy to well-established principles for intervening in matters before the EAB and for filing responses to petitions, WASA satisfies all requirements of applicable practices and law and, therefore, its motion to intervene and request to respond should be granted.

WHEREFORE, for each of the reasons stated above, WASA asks that that its motion to intervene and request to respond be granted.

Respectfully submitted,

**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

By


Counsel

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(202) 787-2240

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion and proposed Order were served by first class U.S. Mail, postage prepaid, this ___ day of May, 2007, upon the following:

Jennifer Chavez
David Baron
Earthjustice
1625 Massachusetts Ave, NW
Suite 702
Washington, D.C. 20036-2243

Deane Bartlett
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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

In the Matter of:)	
)	
District of Columbia Water and Sewer Authority,)	
)	NPDES Appeal No. 07-12
NPDES Permit No. DC0021199)	
)	
)	

**ORDER GRANTING THE DISTRICT OF COLUMBIA WATER AND SEWER
AUTHORITY LEAVE TO INTERVENE AS A PARTY RESPONDENT**

The District of Columbia Water and Sewer Authority (“WASA”) has filed a Motion for Leave to Intervene as a Party Respondent and Request to Respond to Third Party Petitioners’ Petition for Review, and it appearing, for the reasons stated in WASA’s motion, that WASA satisfies the requirements for intervening and responding in the captioned matter, and there is just cause to grant the motion.

WASA’s motion is hereby GRANTED, and WASA shall be and hereby is a party respondent and shall file a response to Petitioner’s Petition for Review as referenced in the Board’s May 10, 2007 letter to EPA.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

By: _____