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ENVIR. APPEALS BOARD


U.S. Environmental Protection Agency
Clerk, Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: NPDES Permit Appeal No. 05-01
Petitioner: District of Columbia Water and Sewer Authority
Permit No. DC0021199

Clerk of the Board:

Enclosed please find the original and one copy of the Motion by the Combined Sewer Overflow Partnership for Leave to Participate in Case and File a Non-Party Brief.

Please contact me at 804-716-9021 or by e-mail at john@aqualaw.com if you have any questions about this filing.

Sincerely,

John A. Sheehan

Enclosures

I. The Interest of the CSO Partnership

The CSO Partnership has been dedicated to representing the interests of the approximately 800 communities nationwide with combined sewer systems since 1988. The CSO Partnership's approximately 80 members are located nationwide, and include the District of Columbia Water and Sewer Authority. The CSO Partnership's members strive to protect public health and the environment in an affordable and cost-effective manner. They are regulated under federal and state laws regarding water pollution control. The CSO Partnership's members have invested hundreds of millions of dollars in the planning, design, permitting and construction of CSO control facilities in accordance with their long-term CSO control programs (LTCPs).

Generally, each community's LTCP specifies the performance standards that must be met in order for CSO discharges to comply with the states' water quality standards. A provision such as the one contained in WASA's permit, which requires a permittee to comply with the states' water quality standards before implementation of the LTCP controls and in a general manner outside the context of the approved LTCP, poses serious compliance issues for communities and exposes communities to enforcement actions and citizens' suits that could disrupt implementation of their approved LTCPs. This is true because even though the community may be in full compliance with a long-term control plan approved by a state or EPA, a suit could be brought arguing that the entity is not in compliance with the general water quality standards compliance language in its permit.

EPA's requirement in WASA's permit is legally invalid and would present tremendous practical problems with LTCP implementation.

II. Relevance of the CSO Partnership's Proposed Brief

The CSO Partnership intends to submit a brief in support of WASA's position that the general narrative water quality standards language in WASA's NPDES permit conflicts with EPA's 1994 Combined Sewer Overflow Control Policy ("CSO Policy"), the Clean Water Act, and a recent congressional directive in EPA's FY 2005 budget. The Partnership will present additional legal arguments on the issue of whether the condition set forth in Section III.E of the permit (Water Quality-Based Requirements for CSOs) is necessary in light of EPA's prior determination that WASA's long-term control plan will meet the District's water quality standards and designated uses. The Partnership will further argue that compliance with the narrative WQS provision at issue is not required at this time by the Policy, CWA, or the recent congressional directive.


There are two critical issues of first impression to be addressed by the Board in this appeal. The first is whether compliance with WQS is required of CSO discharges during LTCP implementation. The second is how water quality-based requirements for CSO communities should be expressed in their "Phase II" permits under the CSO Policy. Resolution of these issues will affect the obligations and compliance status of every CSO community in the country.

As the leading organization dedicated to CSO issues in the country and one of the key players in the congressional development of the national CSO program, the CSO Partnership's participation in this case is both necessary and appropriate. In addition to additional legal grounds for rejecting EPA's proposed permit condition, the CSO Partnership is uniquely qualified to present to the Board the implications and ramifications that permit conditions like those in WASA's permit would have if similar

conditions were imposed in other permits around the country. This includes impermissibly subjecting CSO communities nationwide to costly litigation over water quality standards requirements even though they were fully implementing long term control plans approved by EPA.

Accordingly, because the CSO Partnership has an interest in the outcome of this case and is uniquely qualified to provide additional legal grounds and a nationwide perspective on the issues before the Board, leave to participate and file a non-party brief should be granted.

Respectfully submitted,



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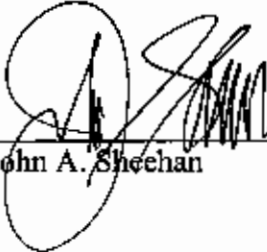
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion by the Combined Sewer Overflow Partnership for Leave to Participate in Case and File a Non-Party Brief was served by regular first class U.S. Mail, postage prepaid, this 24th day of February, 2005, upon the following:

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