

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

In re:

NPDES Appeal Nos. 11-05 & 11-06

Government of the District of Columbia
Municipal Separate Storm Sewer System
NPDES Permit No. DC 0000221

**DISTRICT DEPARTMENT OF ENVIRONMENT'S
UNOPPOSED MOTION FOR EXTENSION OF TIME**

Pursuant to the Board's Rules of Practice, the District Department of the Environment ("DDOE" or "Proposed Intervenor") hereby moves for more time to respond to the Board's four questions in its order issued on November 29, 2011. The issues which the questions present are extremely important and complex, requiring the Attorney General's discussions with the client District at a number of levels.

BACKGROUND

1. The participants in this case are Petitioners Friends of the Earth ("FOE"), Anacostia Riverkeeper, Inc. ("ARK"), Potomac Riverkeeper, Inc. ("PRK"), and Natural Resources Defense Council ("NRDC") (hereinafter "Environmental Petitioners") and Petitioners the District of Columbia Water and Sewer Authority ("DC Water") and the Wet Weather Partnership ("WWP") (hereinafter "DC Water Petitioners") (collectively "Petitioners"). Petitioners appealed to the Board on November 4, 2011.

2. DDOE moved to intervene as a party respondent on November 17, 2011. The below-signed Assistant Attorney General, assigned to represent DDOE at DDOE's Office of General

Counsel, the Deputy Attorney General for Public Interest Litigation, and the Attorney General, brought the Petition on behalf of DDOE.

3. The Board, by its Order on Monday, November 29, 2011, posed four questions to the “Attorney General” and ordered a response by Thursday December 8, 2011:

- (1) Who is representing the permittee, i.e., the Government of the District of Columbia, in this matter?
- (2) Does DC Water have the legal authority to file, as a permittee, a petition under 40 C.F.R. § 124.19 challenging the District of Columbia's MS4 NPDES permit?
- (3) If DC Water has such legal authority, may DC Water take a position that is separate from, and possibly contrary to, the position of DDOE, the agency that has been designated lead responsibility to coordinate stormwater issues on behalf of the Government of the District of Columbia?
- (4) Has there been a change of law or circumstance affecting any of the above issues since DC Water's/WASA' s filing of its 2007 motion requesting substitution of DDOE as the representative of the permittee, the District of Columbia?

(Government of the District of Columbia, MS4 System, NPDES Permit No. DC 0000221, NPDES App. Nos. 11-05 & 11-06, Order Requiring Additional Briefing (Nov. 29, 2011) (“the November 29 Order”), p 3.)

4. In a related order in the instant case, the Board granted the Region’s request for a 60-day extension for briefs, accepting Region 3’s arguments that “the issues raised are “broad, complex and have potential national implications,” that counsel will need to consult with the agency’s leadership during the next several weeks in order to develop a response to these issues, and that the consultation must “necessarily take place in December, when many Agency staff are out of the office” so that coordination may be difficult to accomplish. (Government of the District of Columbia, MS4 System, NPDES Permit No. DC0000221, NPDES Appeals Nos. 11-

DISCUSSION

5. The issues posed are significant, extremely important to the parties, and critical to the smooth implementation of the permit. The positions which the parties take on the questions, particularly those of DDOE and DC Water, may affect the timing and efficacy of the measures contemplated in more than two years of public discussion and negotiation.

6. DDOE notes that the order carefully identified “the Attorney General” as the person/entity whose response was sought. This aspect of the request could pose additional issues related to parties and the representation of parties.

7. In order to respond thoughtfully, carefully and completely to the questions posed, DDOE requires discussions within its leadership and with the Attorney General. The responsible officials will need to be contacted, briefed, time scheduled for them, and meetings held. Of necessity, these consultations must take place during the holiday period, making them difficult to conduct. The Director of DDOE was out of town until Monday, December 5, at which time he will need to address immediately a number of issues that arose at DDOE during his vacation. Lead counsel for DDOE was also out of town until Monday, December 5, and will need time to consult with the client and the Attorney General’s office regarding this response.

8. It is not possible to have these discussions and formulate the required responses by the Order’s December 8 deadline. The matters posed are complex enough that the Order’s roughly single week for a brief is too short. DDOE requests that the Board allow six weeks, to January 17, 2011.

9. EPA Region 3 and Counsel for DC Water Petitioners have advised DDOE that they

would require longer than one week to reply. DDOE has no objection to a longer reply period; and requests at least two weeks for all parties to reply.

10. Counsel for Environmental Petitioners, DC Water Petitioners, and EPA Region 3 do not oppose this motion.

CONCLUSION

For the foregoing reasons, DDOE respectfully requests that this Board grant its motion for extension of time and re-set the due date for response to its November 29 Order and the four questions therein to January 17, 2012, with replies due by January 31, 2012.

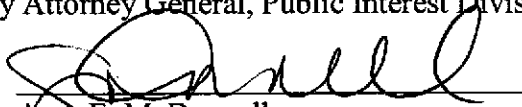
Dated: December 5, 2011

Respectfully submitted,

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Certificate of Service

I certify under penalty of perjury that on December 5, 2011, a copy of the foregoing *District Department of Environment's Consent Motion to Enlarge the Briefing Date on the Four Key Questions from December 8 to January 17* was served as follows:

A copy was electronically filed with the EAB through EPA's Central Data Exchange (CDX) System. A copy was served by First Class Mail, postage prepaid on:

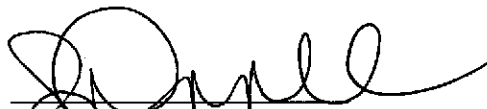
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