

RECEIVED  
U.S. E.P.A.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2005 JUN -1 AM 8:57

ENVIR. APPEALS BOARD

May 31, 2005

Via Federal Express

Ms. Eureka Durr  
Clerk of the Board, Environmental Appeals Board  
U.S. Environmental Protection Agency  
Colorado Building  
1341 G Street N.W. , Suite 600  
Washington, DC 20005

Re: Respondent's Response to Motion of NACWA for Leave to Participate in Case and to  
File Non-Party Brief  
Permit Number: DC 0021199  
Consolidated Appeals 05-01 and 05-02

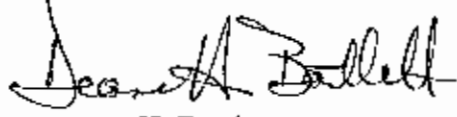
Dear Ms. Durr:

Enclosed please find one original and five copies of the above referenced document,  
which I am also serving on counsel for Petitioners and counsel for Movant in this matter.

Please contact me at 215-814-2776 if you have any questions.

Thank you for your attention to this matter.

Sincerely,



Deane H. Bartlett  
Senior Assistant Regional Counsel

Enclosure

cc: via regular mail (with enclosure):  
David Baron, Esquire - Earthjustice Legal Defense Fund  
David Evans, Esquire - McGuireWoods LLP  
John A. Sheehan, Esquire - AquaLaw PLC

RECEIVED  
U.S. E.P.A.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

JUN -1 AM 8:57  
ENVIR. APPEALS BOARD

\_\_\_\_\_)  
In re: )  
)  
Blue Plains Wastewater Treatment Plant )  
)  
) NPDES Appeal Nos. 05-02  
)  
NPDES Permit No. DC 0021199 )  
)  
and 05-02  
\_\_\_\_\_)

**EPA RESPONSE TO MOTION**  
**BY NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES TO PARTICIPATE**  
**IN CASE AND FILE NON-PARTY BRIEF**

The United States Environmental Protection Agency, Region III (Region or EPA), Respondent in the above-referenced consolidated appeals, hereby files its Response to the Motion pursuant to 40 C.F.R. §22.11(b) by the National Association of Clean Water Agencies (NACWA) to Participate and File a Non-Party Brief in this matter. The NACWA Motion was filed by the same counsel as that of the CSO Partnership, which filed a similar motion on February 25,2005.

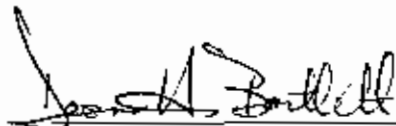
Respondent EPA opposes NACWA's Motion to Participate and File a Non-Party Brief to the extent that NACWA proposes to introduce legal arguments not made by the parties. Eldred v. Ashcroft, 239 F3d 372,378 (D.C. Cir. 2001), reh'g denied en banc, 255 F.3d 849. Specifically, NACWA states that the Board must address "whether compliance with water quality standards is required of CSO discharges during Long Term Control Plan

implementation.” NACWA Motion at page 4. NACWA further argues that such compliance “is not required at this time” by the CSO Control Policy, the Clean Water Act or language from a recent “congressional directive” regarding EPA’s FY 2005 budget. NACWA Motion at page 3. Though one of the Petitioners, the permit applicant, the District of Columbia Water and Sewer Authority (WASA) does argue that it is entitled to a schedule of compliance under District of Columbia water quality standards regulations, their focused issue is not argued as sweepingly as suggested by NACWA in its explanation of the relevance of the third-party brief it proposes to file. Therefore, EPA takes no position as to NACWA’s Motion for Leave to Participate, but opposes any brief that expands upon WASA’s schedule of compliance issue.

Finally, Respondent EPA notes that NACWA did not file comments on, or otherwise participate in the development of the draft permit in this matter.

Respectfully submitted,

Date May 31, 2005



Deane H. Bartlett  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
USEPA Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2776  
Fax: (215) 814-2603  
bartlett.dcane@epa.gov

OF COUNSEL:

Stephen J. Sweeney, Esquire  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
sweeney.stevc@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that Respondent's Response to Motion by the National Association of Clean Water Agencies(NACWA) for Leave to Participate in Case and File a Non-Party Brief in these consolidated Appeals Nos 05-01 and 05-02, was served on this date as set forth below:

The original and five copies were mailed by Federal Express to:

Ms. Eurika Durr  
Clerk of the Board, Environmental Appeals Board  
U.S. Environmental Protection Agency  
Colorado Building  
1341 G. Street, N.W., Suite 600  
Washington, DC 20005

One copy each was mailed by first class mail, postage prepaid to counsel for Petitioners and Counsel for Movant:

Friends of the Earth and Sierra Club:

David Baron, Esq.  
Earthjustice Legal Defense Fund  
1625 Massachusetts Ave., NW Suite 702  
Washington, DC 20036-2212

District of Columbia Water and Sewer Authority:

David E. Evans, Esq.  
McGuireWoods LLP  
Washington Square  
1050 Connecticut Avenue, N. W.  
Washington, D.C. 20036-5317

Counsel for NACWA:

F. Paul Calamita, Esq.  
John A. Sheehan, Esq.  
AquaLaw PLC  
801 E. Main St., Suite 1002  
Richmond, VA 23219

Date: May 31, 2005



Deane H. Bartlett  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Telephone:(215) 814-2776  
Fax: (215) 814-2603