

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

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

MOTION FOR LEAVE TO FILE REPLY BRIEF

The District of Columbia Water and Sewer Authority (“DC Water”) and the Wet Weather Partnership (the “WWP”) (collectively, the “Petitioners”) move for leave to file the attached reply to the response briefs submitted in the above-captioned matter.¹ Petitioners jointly filed their Petition for Review on November 4, 2011. The United States Environmental Protection Agency Region III (“EPA”) filed its response on June 11, 2012, and the District Department of the Environment (“DDOE”) also filed its response on June 11, 2012.

In support of their motion, Petitioners state that the May 20, 2012 Settlement of Permit Appeal No. 11-06 addresses several of the issues raised in this appeal which should be brought to the Board’s attention, and the EPA/DDOE response briefs raise new issues that Petitioners did not previously have the opportunity to brief. These include:

- The proposed modification of several Permit provisions to which Petitioners in this appeal have objected and which are proposed to be addressed in the May 20, 2012

¹ Should the Board grant this motion, WWP’s participation in the reply brief would be limited to issues related to condition 4.3.1.3 of the final MS4 Permit, pursuant to the Board’s order of February 2, 2012.

Settlement Agreement between EPA and the Petitioners in Permit Appeal No. 11-06, even though the issues were not raised in that appeal.

- Allegations that Petitioners have not met threshold requirements for review. EPA Response at 3.
- Allegations that DC Water did not comment on the adequacy of time to develop the Consolidated TMDL Implementation Plan in its comments on the Draft Permit, EPA Response at 7; we will explain that DDOE did comment and, thereby, the issue is preserved for appeal.
- EPA's assertion of EPA policy and guidance to provide the legal authority for the imposition of the public notice requirement for all SSOs. EPA Response at 9.
- EPA's assertion that the public notice requirement for SSOs was not a significant change from the Draft Permit, EPA Response at 10, which we will show is contradicted by EPA's proposal to publish the SSO notification requirement as part of the settlement of appeal No. 11-06.
- EPA's assertion that there is no legal requirement that the Permit specify DC Water's responsibilities, EPA Response at 12, despite DC Water having direct obligations under the permit.
- EPA's assertion that the TMDL Implementation Plan Requirement is practicable. EPA Response at 14.
- EPA's assertion that available tools for estimating reductions from stormwater BMPs demonstrate that the TMDL Implementation Plan requirement is appropriate. EPA Response at 14.

- DDOE's assertion that the WWP lacks standing to challenge the changes to Permit Section 4.3.1.3 from the draft to final Permit because it was a minor, non-substantive change. DDOE Response at 8.
- DDOE's assertion that DC Water's Consolidated TMDL Implementation Plan and Additional Pollutant sources claims must be dismissed because the development of the Consolidated TMDL Implementation Plan and compliance with Permit Section 4.11 are the responsibility DDOE, rather than DC Water. DDOE Response at 9-10.

Allowing Petitioners to file a reply brief is necessary in light of EPA's proposal to revisit several of the appeal issues raised in this appeal in the settlement of Appeal No. 11-06 and will aid the Board in its resolution of the issues raised in the Petition for Review and EPA's and DDOE's responses. Furthermore, this motion is timely, being filed within three days from the submittal of EPA's and DDOE's response briefs. Granting this motion is necessary to allow Petitioners the opportunity to bring to the Board's attention the implications of the settlement of Appeal No. 11-06 on the issues raised in this case, as well as out of fundamental fairness in allowing our reply to both EPA and DDOE's briefs. Granting this motion will not result in undue delay or cause prejudice to any party. Counsel for DDOE and EPA have indicated that they take no position on this Motion.


For the reasons set forth above, Petitioners respectfully request that the Board grant leave to file the attached reply brief to EPA's and DDOE's responses to Petitioners' Petition for Review.²

² Pursuant to the Board's Manual of Practice, we are filing this Motion for Leave to Reply as expeditiously as possible. Our motion and the attached reply respond to briefs by both EPA and DDOE. However, Petitioners only received a copy of the Administrative Record on June 14 and have not had sufficient time to fully review the record. Petitioners reserve the right to seek to augment this Reply to address any issues that come to light once Petitioners have reviewed the Administrative Record.

Dated: June 14, 2012

Respectfully submitted,

THE DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY AND THE
WET WEATHER PARTNERSHIP



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Reply Brief was filed electronically with the Environmental Appeals Board and was served by regular first class U.S. Mail, postage prepaid, this 14th day of June, 2012, upon the following:

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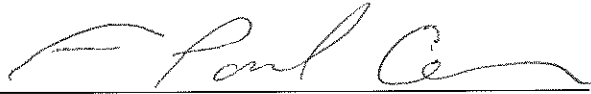
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A handwritten signature in cursive script, appearing to read "F. Paul Calamita", written in black ink on a white background.

F. Paul Calamita

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**ORDER GRANTING DC WATER'S AND WWP'S
MOTION FOR LEAVE TO FILE REPLY BRIEF**

The District of Columbia Water and Sewer Authority ("DC Water") and the Wet Weather Partnership ("WWP") have filed a Motion for Leave to File Reply Brief to the response briefs submitted by the United States Environmental Protection Agency Region III and the District Department of the Environment.

For the reasons stated in DC Water and WWP's motion, the motion is hereby **GRANTED.**
SO ORDERED.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

By: _____