



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

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ENVIR. APPEALS BOARD

Lori G. Kier
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February 12, 2007

Via Facsimile and Regular Mail

Ms. Eurika Durr
Clerk of the Board, Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

In Re: Government of the District of Columbia,
Municipal Separate Storm Sewer System
Docket No. NPDES Appeal No. 04-10

Dear Ms. Durr:

Enclosed for filing please find the original and five copies of the parties' Fifth Joint Motion for Stay of Proceedings and Extension of Time in the above-captioned matter. Also enclosed is a proposed Order granting same.

Sincerely,

Lori G. Kier

cc: (all via facsimile and regular mail)
David S. Baron, Esq.
Bruce Brennan, Esq.
David E. Evans, Esq./Darin K. Waylett, Esq.

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

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ENVIR. APPEALS BOARD

In Re:)

Government of the District of Columbia,)
Municipal Separate Storm Sewer)
System)

NPDES Appeal Nos. 06-07
and 06-08

NPDES Permit No. DC 0000221)

Government of the District of Columbia and)
District of Columbia Water & Sewer Authority,)

Friends of the Earth and Defenders of Wildlife,)
Petitioners,)

U.S. Environmental Protection Agency, Region III,)
Respondent.)

FIFTH JOINT MOTION FOR STAY OF PROCEEDINGS AND EXTENSION OF TIME

The Respondent in this proceeding, the United States Environmental Protection Agency Region III ("EPA"); and Petitioners, the Government of the District of Columbia ("DC Government") including its independent instrumentality the District of Columbia Water and Sewer Authority ("DC WASA"); and Friends of the Earth and Defenders of Wildlife ("FOE/DOW"), collectively, "the Parties," hereby submit this Fifth Joint Motion for Stay of Proceedings and Extension of Time for EPA to file a response to the Petitioners' petitions

("Response") and certified index to the administrative record. Pursuant to Order of the Environmental Appeals Board ("Board") dated November 22, 2006, EPA's consolidated brief in response to the DC and FOE/DOW's Petitions for Review is currently due March 1, 2007.

As indicated in previous filings in this matter, the parties have engaged in numerous settlement discussions, including meetings or teleconferences on June 30, 2006; July 19, 2006; September 12, 2006; October 16, 2006; November 9, 2006; December 11, 2006 and January 26, 2007. However, a number of issues remain unresolved, and the parties agree that approximately forty-five (45) additional days would be helpful to complete this process, which may include a formal mediation.

Accordingly, the parties hereby jointly move for an additional stay of proceedings and extension to EPA's filing obligations until April 16, 2007 to facilitate continued settlement discussions.

Respectfully submitted this 12th day of February 2007,

For Petitioners:

David S Baron by Jon Yki

David S. Baron
Counsel for Friends of the Earth and
Defenders of Wildlife
Earthjustice
1625 Massachusetts Ave., N.W. #702
Washington, D.C. 20036

Bruce Brennan by Lori Kier

Bruce Brennan
Counsel for the Government of the District of
Columbia
Assistant Deputy Commercial Division
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441 4th Street, N.W.
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David Evans by Lori Kier

David E. Evans
Darin K. Waylett
Counsel for the District of Columbia Water and
Sewer Authority and the Government of the
District of Columbia
McGuire Woods, LLP
One James Center
Richmond, VA 23219

For Respondent:

Lori Kier

Lori G. Kier
Senior Assistant Regional Counsel
EPA Region III
1650 Arch Street
Philadelphia, PA 19103

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

In Re:)
)
)
Government of the District of Columbia,) Appeal Number: NPDES No. 06-07
Municipal Separate Storm Sewer) Appeal Number: NPDES No. 06-08
System)
)
)
NPDES Permit No. DC 0000221)
)
)
Government of the District of Columbia and)
District of Columbia Water & Sewer Authority,)
)
)
Friends of the Earth and Defenders of Wildlife,)
)
)
Petitioners,)
)
)
U.S. Environmental Protection Agency, Region III,)
)
)
Respondent.)

PROPOSED ORDER GRANTING FIFTH JOINT MOTION FOR STAY
OF PROCEEDINGS AND EXTENSION OF TIME

For good cause shown, the Parties' Motion for Stay of Proceedings and Extension of Time is hereby granted. EPA shall file its Response to the Petitions and administrative record no later than April 16, 2007.

So ordered.

Dated: _____

ENVIRONMENTAL APPEALS BOARD

By: _____

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I filed the original and five copies of the foregoing Fifth Joint Motion for Stay of Proceedings and Extension of Time with the Clerk of the Environmental Appeals Board by facsimile and U.S. mail. Moreover, I hereby certify that on the same date I sent a copy of the foregoing document to each of the parties below, by facsimile and first class certified mail, return receipt requested:

David S. Baron, Esq.
Earthjustice Legal Defense Fund
1625 Massachusetts Ave., N.W. #702
Washington, D.C. 20036

Bruce Brennan, Esq.
Counsel for the Government of D.C.
Assistant Deputy Commercial Division
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David E. Evans, Esq.
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Counsel for DC WASA
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Dated: _____

2/12/07



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