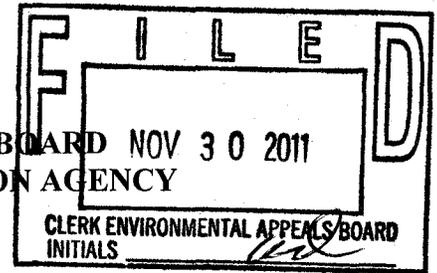


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
)  
)  
Government of the District of Columbia, ) NPDES Appeal Nos. 11-05 & 11-06  
Municipal Separate Storm Sewer System )  
)  
NPDES Permit No. DC0000221 )  
)  
)

**ORDER GRANTING MOTIONS FOR EXTENSIONS OF TIME**

On November 4, 2011, the District of Columbia Water and Sewer Authority (“DC Water”) and the Wet Weather Partnership (“WWP”) jointly filed a petition requesting that the Environmental Appeals Board (“Board”) review a final municipal separate storm sewer system (“MS4”) NPDES permit issued by the United States Environmental Protection Agency Region 3 (“Region 3”) to the Government of the District of Columbia. On the same day, the Friends of the Earth, Anacostia Riverkeeper, Inc., Potomac Riverkeeper Inc., and Natural Resources Defense Council, Inc. (jointly, the “Environmental Petitioners”) also filed a petition for review with the Board. The District Department of the Environment (“DDOE”) subsequently filed a motion with the Board requesting that it be allowed to intervene in this proceeding and file a response to both petitions for review, including the one submitted by DC Water.

The Board, upon receiving the petitions for review, sent a letter to the Region requesting it file a certified index of the administrative record and a response to the two petitions for review, including copies of the relevant portions of the administrative record, by December 27, 2011. See Letter from Eurika Durr, Clerk of the Board, to Marcia Mulkey, Reg’l Counsel, EPA Region 3, Appeal Notification Letter at 1 (Nov. 9, 2011). The Board also sent a letter to the

petitioners and the Region explaining the Board's Alternative Dispute Resolution ("ADR") process and requesting that, if the parties were interested in participating in ADR, to inform the Clerk of the Board by November 23, 2011. *See* Letter from Eurika Durr, Clerk of the Board, to Marcia Mulkey, Reg'l Counsel, EPA Region 3, Notification of ADR Process at 1 (Nov. 9, 2011) [hereinafter Board's ADR Letter].

DC Water and WWP have expressed interest in participating in ADR. DDOE has also indicated that it would consent to participate in ADR should the Board grant its motion to intervene. On November 23, 2011, Region 3 filed a letter with the Board stating that it believes ADR would be beneficial and would like to participate in the process. Letter from Lori G. Kier, Senior Assistant Reg'l Counsel, EPA Region 3, to Eurika Durr, Clerk of the Board, at 1 (Nov. 23, 2011). In its letter, the Region also states that it had spoken with the Environmental Petitioners and that they had not yet determined whether they were interested in participating in ADR. *Id.* at 1-2. The Region therefore requests a 14-day stay to all the proceedings in this action to give the Environmental Petitioners additional time to determine whether they desired proceeding with ADR. *Id.* at 2. The Region further states that it has contacted the other parties in this matter and that they do not have an objection to the stay request. Although not styled as such, the Board reads the Region's November 23, 2011 letter as a motion for an extension of time for parties, in particular the Environmental Petitioners, to respond to the Board's ADR Letter.

Several days later, on November 29, 2011, the Region filed a motion with the Board requesting a 60-day extension of time in which to file its response brief and the certified index to the administrative record. *See generally* Respondent's Motion for Stay of Proceedings and

Extension of Time. The Region states that the issues the Petitioners have raised are “broad, complex and have potential national implications.” *Id.* at 2. Counsel for the Region therefore expects that she will need to consult with Headquarters staff during the next several weeks to develop a response to these issues. *Id.* Because these consultations will necessarily take place in December, when many Agency staff are out of the office, counsel believes coordination may be difficult to accomplish. *Id.* Counsel for the Region also notes that she has contacted both sets of petitioners as well as DDOE, the proposed intervenors, and that none of the three attorneys object to the extension.

Notably, on November 29, 2011, the Board required the Government of the District of Columbia and the Region to provide additional briefing on certain issues. The briefs addressing these issues are due from the parties December 8 and December 15, 2011, respectively. The Board believes it appropriate for the parties to opine on their interest to participate in ADR in this matter following this further briefing period. Thus, the Board grants the request for an extension of time for the Environmental Petitioners to respond to the Board’s ADR Letter. Environmental Petitioners have until December 22, 2011, to submit a response as to whether they would like to participate in ADR. Parties who have already responded to the Board’s ADR Letter may, once the additional briefing is completed, submit an updated response to the Board’s ADR letter should they so choose. If the Board does not receive any further response from a party that has already responded concerning ADR, the Board will assume the party’s previous position remains unchanged.

For good cause shown and in light of the other extension of time the Board has granted to accommodate the additional briefings in this matter, the Board also grants the Region’s motion

for an extension of time to file a certified index of the administrative record and a response to the petition for review. These documents are due no later than February 24, 2012.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Date:

11/30/11



Catherine R. McCabe  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Granting Motions for Extensions of Time in the matter of the Government of the District of Columbia, NPDES Appeal Nos. 11-05 and 11-06, were sent to the following persons in the manner indicated:

**By Pouch Mail:**

Lori G. Kier  
Senior Assistant Regional Counsel  
U.S. EPA Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

**By First Class Mail:**

F. Paul Calamita  
AquaLaw PLC  
6 South 5th Street  
Richmond, VA 23219

Randy Hayman, General Counsel  
Gregory Hope, Principal Counsel  
DC Water  
5000 Overlook Ave, S.W.  
Washington, DC 20032

Jennifer C. Chavez  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, DC 20036

Rebecca J. Hammer  
Natural Resources Defense Council  
1152 15th Street, NW  
Suite 300  
Washington, DC 20005

Irvin B. Nathan  
Attorney General for the District of  
Columbia  
441 4th Street, NW  
Washington, D.C. 20001

Ellen Efros  
Assistant Deputy AG  
Civil Litigation Division  
441 4th Street, NW, Suite 600 South  
Washington, D.C. 20001

Amy E. McDonnell  
Alan Barak  
Office of the Attorney General  
District Department of the Environment  
1200 First Street, NE, Seventh Floor  
Washington, DC 20002

Dated: NOV 30 2011

  
Annette Duncan  
Secretary