

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

In re:)	
)	
)	
Government of the District of Columbia,)	NPDES Permit Appeal No. 11-05
Municipal Separate Storm Sewer System,)	
NPDES Permit No. DC 0000221)	

**MOTION FOR LEAVE TO INTERVENE AND TO RESPOND TO THE
DC WATER AND SEWER AUTHORITY AND WET WEATHER PARTNERSHIP'S
PETITION FOR REVIEW**

Friends of the Earth, Anacostia Riverkeeper, Inc., Potomac Riverkeeper Inc., and Natural Resources Defense Council, Inc. (collectively, "Citizen Petitioners") respectfully request leave to intervene in the above-captioned appeal and to file the attached response brief and to participate in any oral arguments scheduled in this case. In the alternative, Citizen Petitioners request leave to file a non-party brief.

Citizen Petitioners have a longstanding demonstrated interest in the matters raised by the District of Columbia Water and Sewer Authority ("DC Water") and the Wet Weather Partnership ("WWP") concerning the storm water permit issued to the Government of the District of Columbia by the United States Environmental Protection Agency ("EPA"), as evidenced by their petition concerning the same permit in NPDES Appeal No. 11-06 (Nov. 4, 2011) (Dkt. 3) (stayed by order of the Board dated May 22, 2012 (Dkt. 37), pending action by EPA to effectuate a settlement agreement in that appeal). Citizen Petitioners have appealed numerous versions of EPA's permit for the District's storm water system to ensure that the permit meets all requirements of the Clean Water Act, the District's water quality standards, and EPA-approved total maximum daily loads ("TMDLs"). *See* Citizen Petition for Review at 9-12.

DC Water and WWP moved on June 14, 2012 to file a “Reply to EPA’s and DDOE’s Responses to Petition for Review.” (Dkt. 41). The proposed Reply brief presents arguments that would undermine the settlement agreement reached between Citizen Petitioners and EPA as a result of their successful alternative dispute resolution process in the related NPDES Appeal No. 11-06. *See* DC Water/WWP Reply at 13-20. In particular, DC Water and WWP seek to undermine crucial water quality-based effluent limits in the permit that are supported by fundamental requirements of the Clean Water Act for NPDES permits. *Id.* The relief requested by DC Water and WWP would adversely affect the interests of the Citizen Petitioners’ members in having clean and safe waters in the District in which to swim, fish, and play.

While the Citizen Petitioners share a common interest with EPA in defending the challenged permit provisions, particularly the requirement to develop and implement a “Consolidated TMDL Implementation Plan,” they represent individual members whose use and enjoyment of the waters is adversely affected by storm water discharges, and whose interests are not adequately represented by government agencies whose interests encompass institutional interests not shared by Citizen Petitioners’ members. Thus, in order to protect their interests adequately, the Citizen Petitioners request full party status.


Granting this motion will not expand the issues raised in this appeal or delay the Board’s decision. The attached brief is targeted to address the issues raised in Section B of the petition in this matter, and in particular those arguments raised in DC Water and WWP’s proposed Reply brief that seek to undermine the settlement agreement reached between Citizen Petitioners and EPA.

Counsel for the Petitioners state that D.C. Water and WWP oppose the requests set forth in this motion. Counsel for EPA and counsel for the District Department of the Environment, respectively, state that those agencies take no position on this motion.

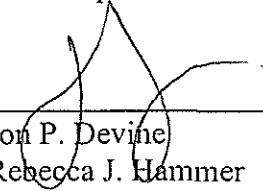
Conclusion

In conclusion, Citizen Petitioners respectfully request that the Board enter an order granting them leave to participate in DC Water and WWP's appeal as parties respondent and to participate in any oral arguments scheduled in this case. In the alternative, Citizen Petitioners request leave to file the attached non-party brief.

Dated: July 6, 2012



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