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February 3, 2012

By Electronic Submission

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

Re: District of Columbia, Municipal Separate Storm Sewer System
Permit Number: DC0000221
Appeal Numbers: NPDES 11-05 and NPDES 11-06

Dear Ms. Durr:

Attached please find the District of Columbia Water and Sewer Authority's and Wet Weather Partnership's Opposition to District Department of the Environment's Motion for Leave to Reply to DC Water's and Wet Weather Partnership's Response to DDOE's Additional Briefing and Board's Order to Show Cause.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. Paul Calamita", is written over a light blue horizontal line.

F. Paul Calamita

cc: Jennifer C. Chavez, Esq., Earthjustice
Rebecca J. Hammer, Esq., Natural Resources Defense Council
Irvin B. Nathan, Esq., Attorney General for the District of Columbia
Ellen Efros, Esq., Assistant Deputy Attorney General
Amy E. McDonnell, Esq./Alan Barak, Esq., District Department of the Environment
Kelly A. Gable, Esq., Assistant Regional Counsel, EPA Region III
Randy Hayman, Esq., DC Water, General Counsel
Gregory Hope, Esq., DC Water, Office of the General Counsel, Principal Counsel

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

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

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY’S AND WET
WEATHER PARTNERSHIP’S OPPOSITION TO DISTRICT DEPARTMENT OF THE
ENVIRONMENT’S MOTION FOR LEAVE TO REPLY TO DC WATER’S AND WET
WEATHER PARTNERSHIP’S RESPONSE TO DDOE’S ADDITIONAL BRIEFING
AND BOARD’S ORDER TO SHOW CAUSE**

The District of Columbia Water and Sewer Authority (“DC Water”) and the Wet Weather Partnership (the “WWP”) respectfully request that the Environmental Appeals Board (the “Board”) deny District Department of the Environment’s (“DDOE”) Motion for Leave to Reply to DC Water’s and WWP’s Response to DDOE’s Additional Briefing and Board’s Order to Show Cause.

DDOE’s Motion for Leave to Reply fails to provide any justification supporting the need to file a reply. DDOE simply indicates in the motion that the motion is timely, will help the Board to decide the case, and will not be prejudicial. DC Water and the WWP disagree that it will not be prejudicial, and DDOE provides no substantive basis to warrant the Board allowing a reply brief.

DDOE's proposed Reply restates a number of DDOE's positions. Beyond that, DDOE takes the position that the holdings in the cases¹ cited by DC Water are "narrow" and do not stand for the propositions asserted by DC Water. DDOE should not be allowed to reply, and thereby have the last word on these cases, particularly given DDOE's strategic decision not to raise these cases in its Response to Order Requiring Additional Briefing, filed on January 12, 2012. DDOE gives no explanation for its failure to address these cases in its previous briefing. The cases speak for themselves, and, accordingly, no additional briefing by DDOE is warranted. Contrary to DDOE's representation in its Motion for Leave to Reply, any such additional briefing will be prejudicial to DC Water.

Finally, DDOE's proposed Reply seeks to address the issue of the WWP's standing to appeal the Permit, in addition to DC Water's standing and its relationship with the District government. However, DDOE's November 17, 2011 Motion to Intervene in this matter has not been granted. Accordingly, DDOE is not a party entitled to challenge the WWP's standing. DDOE has no special relationship with the WWP to warrant DDOE's input on this issue unless and until it is made a proper party to the appeal. Even then, DDOE's opposition to the WWP's standing is clearly incorrect.

For the reasons stated above, the Board should deny DDOE's Motion for Leave to Reply to DC Water's and WWP's Response to DDOE's Additional Briefing and Board's Order to Show Cause. If, however, the Board grants DDOE's Motion, DC Water and the WWP should be permitted to file a response.

¹See *Dingwall v. District of Columbia Water and Sewer Authority*, 766 A.2d 974 (D.C. 2001); *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 851 A.2d 410 (D.C. 2004); *Zavala v. District of Columbia Water and Sewer Authority*, No. 06-1864 (D.C. Super. Ct. May 31, 2006).

Dated: February 3, 2012

Respectfully submitted,

THE DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY



By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to District Department of the Environment's Motion for Leave to Reply to DC Water's and Wet Weather Partnership's Response to DDOE's Additional Briefing and Board's Order to Show Cause was filed electronically with the Environmental Appeals Board and was served by regular first class U.S. Mail, postage prepaid, this third day of February, 2012, upon the following:

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Government of the District of Columbia, Municipal Separate Storm Sewer System.)	NPDES Permit Appeal Nos. 11-05 & 11-06
)	
NPDES Permit No. DC0000221)	
)	

**ORDER DENYING THE DISTRICT DEPARTMENT OF THE ENVIRONMENT'S
MOTION FOR LEAVE TO FILE A REPLY TO DC WATER'S AND THE WET
WEATHER PARTNERSHIP'S RESPONSE TO DDOE'S ADDITIONAL BRIEFING
AND THE BOARD'S ORDER TO SHOW CAUSE**

The District Department of the Environment ("DDOE") has filed a Motion for Leave to Reply to DC Water's and Wet Weather Partnership's Response to DDOE's Additional Briefing and Board's Order to Show Cause.

DDOE's motion is hereby **DENIED**.

SO ORDERED.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

By: _____