

In re:

The Amici and their members have a long-standing interest in the Clean Water Act's and EPA's National Pollutant Discharge Elimination System (NPDES) stormwater permitting program for constructing and managing newly and redeveloped properties, including properties contained within municipal separate storm sewer systems (MS4s), and have participated extensively in EPA's National Stormwater Rulemaking. The concerns the Amici have raised with EPA Headquarters regarding controls on newly and redeveloped properties are equally and directly applicable to EPA Region 10's mandates now included within the Joint Base Lewis-McChord (JBLM) MS4 permit being appealed here.

Since 2009, EPA engaged Property Builders and Owners Amici or their members to inform its national strategy for controlling discharges from newly or redeveloped sites. Specifically, EPA has: (1) required many members of the Amici to respond to Information Collection Requests (*see* <http://cfpub.epa.gov/npdes/stormwater/rulemaking/icr.cfm>); (2) enrolled Amici and/or members to participate as small entity representatives in EPA's Small Business Enforcement Fairness Act review of future regulatory options (*see* EPA Docket No. EPA-HQ-OW-2009-0817 *and* <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>); and (3) invited Amici and their members to engage in public outreach sessions. Now, however, EPA is attempting to carry out the objectives of its national rulemaking effort through individual permits, both preventing Property Builders and Owners Amici and their members from active participation in the national dialogue regarding the Agency's authority to mandate the type of standards incorporated into the JBLM NPDES permit, and forcing Property Builders and Owners Amici to engage in a permit-by-permit review.

Property Builders and Owners Amici and their members would be adversely affected by potentially precedent setting mandates found in the JBLM NPDES permit. Amici have successfully intervened in similar litigation elsewhere to challenge comparable mandates to those raised in this case as contrary to EPA's Clean Water Act and NPDES permitting authority (*see e.g., Va. Dep't of Transp. v. U.S. EPA*, 2013 WL 53741) Property Builders and Owners Amici and/or members also have participated in construction and MS4 permitting issues in Washington. Accordingly, Amici qualify as "any interested person[s]" pursuant to 40 CFR § 124.19(e).

Property Builders and Owners Amici support the issues raised in Petitioner's permit challenge, but their interests are not entirely consistent with nor fully represented by Petitioners. If EPA's permit is allowed to stand, MS4 operators (such as Petitioners) must regulate new or redevelopment within the MS4 (such as the types of projects constructed or owned by Amici's members) in a manner that clearly exceeds requirements contained in NPDES stormwater permits required for active construction activities. Further, the new MS4 mandates would apply to newly or redeveloped properties *ad infinitum* (unaffected by or impacted by the termination of an NPDES construction stormwater permit). Thus, the Petitioner's and Property Builders and Owners Amici's positions and the impacts of EPA's actions on them are unique and distinct. Accordingly, Property Builders and Owners Amici request leave to participate in this appeal to inform the Board's deliberations through Amici's unique and informed perspective on these issues.

The current deadline for filing an amicus brief under the Board's rules is today, January 30, 2014. However, on December 5, 2013 the Board issued an order staying proceedings in this matter until March 31, 2014 to allow the parties to participate in the Board's Alternative Dispute

Resolution Program. In light of the current stay, and in order to promote efficiency for the Board and the parties, Property Builders and Owners Amici request an extension of time to file its amicus brief until April 15, 2014, 15 days after the expiration of the stay of proceedings, and the same date requested by all other amici in this case. Consistent with prior motions in this case, Property Builders and Owners Amici respectfully request that the Board grant this motion to participate as amicus curiae and for an extension of time to April 15, 2014 to file its amicus brief.

Respectfully submitted this 30th day of January, 2014.

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Roundtable)*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Unopposed Motion for Leave to Participate as Amicus and Extension of Time to April 15, 2014 was sent to the following persons, in the manner specified, on January 30, 2014:

By electronic filing to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, N.W.
WJC East Building, Room 3332
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By electronic and U.S. mail to:

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Dated: January 30, 2014

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