

**COMMONWEALTH OF KENTUCKY  
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
FILE NO. DOW-26767-039**

**THE CITY OF CINCINNATI,**

**PETITIONER,**

**VS.**

**ENVIRONMENTAL AND PUBLIC PROTECTION  
CABINET,  
AND  
SANITATION DISTRICT NO. 1 OF NORTHERN  
KENTUCKY**

**RESPONDENTS.**

**MEMORANDUM IN SUPPORT OF THE ASSOCIATION OF  
METROPOLITAN SEWERAGE AGENCIES' MOTION FOR LEAVE  
TO PARTICIPATE AS *AMICUS CURIAE***

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Pursuant to 401 KAR 100:010 Section 11, the Association of Metropolitan Sewerage Agencies (“AMSA”) files this memorandum in support of its motion for leave to participate in this proceeding for the limited purpose of filing an *amicus curiae* brief in support of issuance of KPDES Permit No. KY0105031 by Respondent, the Kentucky Environmental and Public Protection Cabinet (“EPPC”), to Respondent Sanitation District No. 1 of Northern Kentucky (“Sanitation District No. 1”). AMSA seeks to participate in this proceeding only for the limited purposes stated in this memorandum and does not seek to appear at the formal hearing in this matter.

The rules applicable to this proceeding authorize AMSA’s participation herein for the limited purpose of filing an *amicus curiae* brief in support of the issuance of KPDES Permit No. KY0105031. 401 KAR 100:010 Section 11(3) (“A person granted leave to intervene in a proceeding

may participate in the proceeding ... in a limited capacity.”); *see also Parker v. Natural Res. & Env'tl. Protection Cabinet*, File No. PDH-21041-037, 1995 WL 236633 (Secretary's Order entered April 6, 1995) (allowing Kentucky Crushed Stone Association to file *amicus curiae* brief under 504 KAR 7:091, which is identical to 401 KAR 100:010 Section 11).

AMSA is a nonprofit trade association comprised of nearly 300 publicly-owned treatment works members who serve the majority of this country's sewerage population and treat over 18 billion gallons of wastewater each day. AMSA's members operate municipal wastewater treatment plants under federal and state laws and regulations in cities and towns across the United States, including in Kentucky.<sup>1</sup> Many of AMSA's members have the responsibility of providing their citizens with both safe drinking water and with wastewater treatment services, and thus have facilities that are regulated under both the Safe Drinking Water Act (“SDWA”) and the Clean Water Act (“CWA”), and other provisions at issue in this proceeding.

Both the nature of the issues raised by Petitioner and AMSA's interest in those issues warrant and support AMSA's participation in this proceeding pursuant to 401 KAR 100:010 Section 11. This case presents issues of first impression, important on a nationwide scale to AMSA, regarding the alleged interplay between the SDWA and the CWA and the requirements of the CWA. If Petitioner's position as presented in the Petition for Hearing is adopted, it would set a precedent to allow non-CWA requirements to be enforced tacitly—and without prior notice—through the CWA permit system, subjecting AMSA's members to greatly increased costs, regulatory penalties, and litigation costs.

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<sup>1</sup> More information about AMSA is available at [www.amsa-cleanwater.org](http://www.amsa-cleanwater.org).

Specifically, it is AMSA's position that, contrary to Petitioner's allegation, the SDWA does not require or contain criteria that must be considered during the NPDES permitting process and that NPDES permits do not require limitations for pollutants that are not the subject of specific numeric water quality standards (e.g., endocrine disrupters, *Cryptosporidium*, *Giardia*, viruses, etc.). Furthermore, and contrary to Petitioner's assertion otherwise, it is AMSA's position that the CWA does not require that NPDES permits be put on hold until total maximum daily loads (TMDLs) under CWA § 303(d) are developed. Petitioner's interpretation of the SDWA, CWA, and Kentucky's administrative regulations promulgated thereunder would have sweeping and direct ramifications for AMSA's members in Kentucky, and would set new precedent for AMSA members nationwide. Allowing AMSA to file an *amicus curiae* brief will add meaningful insight on these issues from a credible, established organization with specific knowledge and a national perspective on these issues with minimal burden on the parties or the Hearing Officer.

The limited participation AMSA seeks in these proceedings will not prejudice the parties. AMSA does not seek to participate in any way other than the filing of an *amicus curiae* brief. If Petitioner seeks leave to respond to AMSA's brief, AMSA will not object.

For the foregoing reasons, AMSA respectfully asks that the Hearing Officer grant this motion.

This \_\_\_\_ day of \_\_\_\_\_, 2005.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served as indicated below on this the \_\_\_\_\_ day of March, 2005 to:

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